TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 927.

THE TOWNSHIP OF EAST OAKLAND, PLAINTIFF IN ERROR,

vs.

WILLIAM B. SKINNER.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

FILED NOVEMBER 14, 1876.

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UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit of the United States for the southern district of Illinois, greeting:

Because in the records and proceedings, and also in the rendition of the judgment of a plea which is in the said circuit court before you, between William B. Skinner and the Township of East Oakland, a manifest error hath happened, to the great damage of the said Township of East Oakland, as by its complaint appears, we, being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid
2 being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, this 8th day of April, in the year of our Lord one thousand eight hundred and seventy-six, and of our Independence the one hundredth year.

[SEAL.]

J. A. JONES,
Clerk of the Circuit Court of the U. S. for Southern District of Illinois.

(Indorsed:) Supreme Court of the United States. Township of East Oakland, plaintiff in error, vs. William B. Skinner, defendant in error. Writ of error. Filed April 8th, A. D. 1876. J. A. Jones, clerk.

3 UNITED STATES OF AMERICA, *ss:*

To William B. Skinner, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of Illinois, wherein the Township of East Oakland is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness Samuel H. Treat, district judge of southern district of Illinois, and one of the judges of the circuit court of the United States for said district, at Springfield, in said district, this 8th day of April, in the year of our Lord one thousand eight hundred and seventy-six, and of our Independence the one hundredth year.

S. H. TREAT.

We hereby accept service of the foregoing citation.

CULLOM, SCHOLES & MATHER,
Attys. for Wm. B. Skinner.

(Indorsed:) Supreme Court of the United States. Township of East Oakland vs. William B. Skinner. In error. Citation.

4 Pleas in the circuit court of the United States of America for

the southern district of Illinois, held at the city of Springfield, in said district, before the Hon. Samuel H. Treat, district judge of said district, and in the absence of the Hon. Thomas Drummond, judge of the seventh judicial circuit pro tempore, sole judge of said circuit court, on Saturday, the twenty-fifth day of March, at the January term of said court, in the year of our Lord one thousand eight hundred and seventy-six, and of our Independence the one hundredth year.

J. A. JONES, *Clerk.*

WILLIAM B. SKINNER
vs.
THE TOWNSHIP OF EAST OAKLAND. } In assumpsit.

SOUTHERN DISTRICT OF ILLINOIS, *ss:*

William B. Skinner, a citizen of the State of New York, put in his place Messrs. Cullom, Scholes, and Mather, his attorneys, against the Township of East Oakland, a corporation existing under and by virtue of the laws of the State of Illinois, and situate in the southern district of said State, defendant, which put in its place H. Van Sellar, esq., its attorney, in a plea of trespass on the case upon promises.

SOUTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that heretofore, to wit, on 31st day of August, in the year of our Lord one thousand eight hundred and seventy-four, came said plaintiff, by his said attorneys, and filed in the office of the clerk of said court his bond for costs in said cause; which said bond for costs is in the words and figures following, to wit:

Bond for costs.

Circuit court United States of America, southern district of Illinois, ss,
January term, A. D. 1875.

WILLIAM B. SKINNER
vs.
THE TOWNSHIP OF EAST OAKLAND. } In assumpsit. Damages, $1,800.

We do hereby enter ourselves security for costs in this cause, and acknowledge ourselves bound to pay, or cause to be paid, all costs which may accrue in this action, either to the opposite party or to any of the officers of the court, in pursuance of the laws of this State and of the United States.

Dated this 30th day of Aug., 1874.

SAML. D. SCHOLES.
I. C. MATHER.

(Endorsed:) Filed August 31st, A. D. 1874. J. A. Jones, clerk.

And then, afterwards, to wit, on the 10th day of December, in the year last aforesaid, a summons was issued in said cause out of the office of the clerk of said court, directed and delivered to the marshal of said district to execute; which said summons, together with the return of the marshal thereon, in words and figures as follows, to wit:

Summons.

Circuit court of the United States of America, southern district of Illinois, ss:

The United States of America to the marshal of the southern district of Illinois, greeting:

We command you to summon the Township of East Oakland, if found in your district, to be and appear before our judges of our circuit court of the United States for the southern district of Illinois, on the first day of the next term thereof, to be held at Springfield, in the district aforesaid, on the first Monday of January next, to answer unto William B. Skinner of a plea of trespass on the case upon promises to his damage, as he alleges, of one thousand eight hundred dollars, and have you then and there this writ.

7 Witness the Hon. Morrison R. Waite, Chief-Justice of the Supreme Court of the United States of America, at Springfield aforesaid, this tenth day of December, in the year of our Lord one thousand eight hundred and seventy-four, and of our Independence the ninety-ninth year.

[L. S.] J. A. JONES, *Clerk.*

I hereby appoint L. C. Thornton my special deputy, to execute this writ, this 12th day of December, A. D. 1874.

E. R. ROE,
U. S. Marshal.

Executed this writ on the 16th day of December, A. D. 1874, by reading and delivering a true copy of the same to Hiram Rutherford, esq., supervisor of the within-named township of East Oakland.

E. R. ROE,
U. S. Marshal,
By L. C. THORNTON,
Special Deputy.

(Endorsed:) Filed December 24, A. D. 1874. J. A. Jones, clerk.

And then, afterwards, to wit, on the 25th day of December, in the year last aforesaid, came said plaintiff, by his said attorneys, and
8 filed in said clerks office his declaration and copy of coupons & ac. sued on in said entitled cause; which said declaration, copy of coupons, & ac. sued on are in the words and figures following, to wit:

In circuit court, Jany. term, A. D. 1875.

Declaration.

UNITED STATES OF AMERICA,
Southern District of Illinois, ss:

William B. Skinner, a citizen of the State of New York, plaintiff, by Cullom, Scholes & Mather, his attys., complains of the township of East Oakland, a corporation existing under the laws of the State of Illinois, and situate in the southern district of said State, defendant, of a plea of trespass on the case on promises; for that whereas the defendant, heretofore, to wit, on the twentieth day of April, eighteen hundred and seventy-one, at, to wit, said southern district of Illinois, made its fifty-

four certain coupons in writing, twenty-one (21) thereof being for $50 each, numbered, respectively, 201, 202, 203, 204, 205, 206, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 292, 298, 299; plaintiff avers that said coupons last-above numbered are fac-similes of each other, except as to numbers; that the following is a copy of above No. 201:

$50.] 3. [No. 201.

The Township of East Oakland will pay to bearer, on the 1st day of March, A. D. 1874, at the Security Bank of the city of New York,
9 fifty dollars, being one year's interest on bond as numbered above.

CHARLES CLEMENT,
Supervisor and Agent.

J. S. YEARGIN, *Clerk.*

And plaintiff alleges that the remaining thirty-three of said fifty-four coupons are for ten dollars each, and are numbered, respectively, as follows, to wit, 31, 32, 34, 36, 37, 38, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 63, 66, 67, 68, 69, 70, 81, 82, 83, 84, 85, 86, 87, 88, 89, & 98; plaintiff further avers that said thirty-three coupons are fac-similes of each other, except as to numbers, and that the following is a copy of said numbered coupon 31, which is in the words and figures following, to wit:

$10.] 3. [No. 31.

The Township of East Oakland will pay to bearer, on the 1st day of March, A. D. 1874, at the Security Bank of the city of New York, ten dollars, being one year's interest on bond as numbered above.

CHARLES CLEMENT,
Supervisor and Agent.

J. S. YEARGIN, *Clerk.*

And plaintiff avers that said fifty-four coupons, on the day and year in this count first above mentioned, were duly delivered by said defendant, and that they afterward, to wit, on the day and year and at the district aforesaid, came to the possession of plaintiff as owner and bearer thereof, and that he is still in the possession thereof
10 as such owner and bearer, by reason whereof the said defendant became liable to pay to said plaintiff the said sums of money in said coupons mentioned, according to the tenor and effect thereof, and being so liable, the said defendant, in consideration thereof, afterwards, to wit, on the day and year, and at the place first above mentioned, undertook and faithfully promised the said plaintiff well and truly to pay to the said plaintiff the said sums of money in said coupons mentioned, according to the tenor and effect thereof, yet the said defendant has not paid said coupons, or any part thereof, or either of them, although often requested so to do.

And whereas also the said defendant, a body corporate, situate in said district, on, to wit, the first day of August, eighteen hundred and seventy-four, at, to wit, said district, was and still is indebted to the plaintiff in the sum of eighteen hundred dollars for money before that time paid, laid out, and expended by the plaintiff for the use of the defendant at its request; and in the further sum of eighteen hundred dollars, for so much money before that time lent and accommodated by the plaintiff to the defendant at its request; and in the sum of eighteen

hundred dollars, for so much money before that time had and re-
11 ceived by the defendant to the use of the plaintiff; and in the sum of eighteen hundred dollars for money found to be due from the defendant to the plaintiff on an account then and there stated between them; and in the sum of eighteen hundred dollars, for so much money before that time due from the defendant to the plaintiff for interest upon and for the forbearance of divers large sums of money before then due from the defendant to the plaintiff, and by the plaintiff forborne to the defendant for long spaces of time before then elapsed, at the request of the defendant; whereby the defendant became liable to pay the plaintiff the said several sums of money mentioned when it should be requested; and the defendant afterwards, to wit, on the day and year last aforesaid, at, to wit, said district, in consideration of the premises, then and there promised to pay the said several sums of money to the plaintiff on request; yet the defendant has not, though often requested, paid the said several sums of money, nor either of them, nor any part thereof, to the damage of plaintiff eighteen hundred dollars. Wherefore he brings suit.

By CULLOM, SCHOLES & MATHER, *his Attys.*

Copy of instruments sued on.

12 21 fifty-dollar coupons, Nos. 201, 202, 203, 204, 205, 206, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 292, 298, & 299, which are fac-similes of each other, except as to numbers, one of which is in the words and figures following, to wit:

$50.] 3. [No. 201.

The Township of East Oakland will pay to bearer, on the 1st day of March, A. D. 1874, at the Security Bank of the city of New York, fifty dollars, being one year's interest on bond as numbered above.

CHARLES CLEMENT,
Supervisor and Agent.

J. S. YEARGIN, *Clerk.*

And 33 ten-dollar coupons, Nos. 31, 32, 34, 36, 37, 38, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 63, 66, 67, 68, 69, 70, 81, 82, 83, 84, 85, 86, 87, 88, 89, & 98, which are fac-similes of each other, except as to numbers, one of which is in the words and figures following, to wit:

$10.] 3. [No. 31.

The Township of East Oakland will pay to bearer, on the 1st day of March, A. D. 1874, at the Security Bank of the city of New York, ten dollars, being one year's interest on bond as numbered above.

CHARLES CLEMENT,
Supervisor and Agent.

J. S. YEARGIN, *Clerk.*

Copy of ac. sued on.

The Township of East Oakland to William B. Skinner, Dr.

To money paid, laid out, & expended		$1,800 00
" " lent and accommodated		$1,800 00
had and received		$1,800 00
" " due on a/c stated		$1,800 00
" " " for interest forborne		$1,800 00

(Endorsed:) Filed December 25, 1874. J. A. Jones, clerk.

13 And afterwards, to wit, on Monday, the 4th day of January, at the January term of said court, in the year of our Lord eighteen hundred and seventy-five, the following proceedings were had in said court in said entitled cause and entered of record, to wit:

Order.

WILLIAM B. SKINNER
vs.
TOWNSHIP OF EAST OAKLAND. } Assumpsit.

On motion of plaintiff, by Messrs. Cullom, Scholes and Mather, his attorneys, this cause is continued.

And then, afterwards, to wit, on the 15th day of October, in the year last aforesaid, came said parties, by their respective attorneys, and filed in said clerk's office their stipulation in said cause, which said stipulation is in the words and figures as follows, to wit:

Stipulation.

UNITED STATES OF AMERICA,
Southern District of Illinois:

In circuit court, A. D. 1875.

WILLIAM B. SKINNER
vs.
TOWN OF EAST OAKLAND. } In assumpsit.

14 It is hereby agreed and stipulated between the respective counsel in the above-entitled cause that plaintiff may add to his suit already commenced as many more interest-coupons of East Oakland Town as will increase the amount in controversy to over $5,000, and plaintiff stipulates at trial to have and introduce such an additional amount in evidence. Defendant is to plead the gen'l issue, and under it to introduce anything in evidence relevant to the case, the same as if it had been specially and well pleaded, upon reasonable notice before trial to plff.'s counsel of such matters. It is stipulated to try this case in vacation, Wednesday, Nov. 3rd, 1875. Time of trial changed to Jany. 25th, 1876.

CULLOM, SCHOLES & MATHER AND
GEO. A. SAUNDERS, *Counsel for Plff.*
H. VAN SELLAR, *Atty. for Deft.*

(Endorsed:) Filed October 15, 1875. J. A. Jones, clerk.

And then, afterwards, to wit, on Tuesday, the 4th day January, at the January term of said court, in the year of our Lord eighteen hundred and seventy-six, the following further proceedings were had
15 in said court in said cause and entered of record, to wit:

Order.

WILLIAM B. SKINNER
vs.
TOWNSHIP OF EAST OAKLAND. } Assumpsit.

On motion of plaintiff, by Messrs. Cullom, Scholes and Mather, his

attorneys, this cause is set for hearing on Monday, the 17th day January, inst.

And now, afterwards, to wit, on Monday, the 17th day of January, at the term and in the year last aforesaid, the following further proceedings were had in said court in said cause and entered of record, to wit:

Order.

WILLIAM B. SKINNER
vs.
TOWN OF EAST OAKLAND. } Assumpsit.

By consent of parties, by their attorneys, this cause is set for hearing on Tuesday, the 25th day of January inst.

And afterwards, to wit, on Thursday, the 20th day of January, at the term and in the year last aforesaid, the following further pro-
16 ceedings were had in said court in said cause and entered of record, to wit:

Order.

WILLIAM B. SKINNER
vs.
TOWNSHIP OF EAST OAKLAND. } Assumpsit.

By consent of parties, by their attorneys, this cause is set for hearing on Tuesday, the 25th day of January inst.

And then, afterwards, to wit, on the 25th day of January, in the year last aforesaid, came said defendant, by H. Van Sellar, esq., its attorney, and filed in the office of the clerk of said court its plea in said-entitled cause; which said plea is in the words and figures as follows, to wit:

Plea.

In circuit court, June term, A. D. 1875.

UNITED STATES OF AMERICA,
Southern District of Illinois, ss:

THE TOWN OF EAST OAKLAND
ats.
WILLIAM B. SKINNER. } Assumpsit.

And the defendant, by Van Sellar, its attorney, comes and de-
17 fends the wrong and injury, when, etc., and says that it did not undertake and promise in manner and form as the plaintiff has in his declaration thereof complained against it; and of this it puts itself upon the country, etc.

By VAN SELLAR,
Its Attorney.

In the circuit court of the United States of America, southern district of Illinois, June term, A. D. 1875.

THE TOWN OF EAST OAKLAND
ats.
WILLIAM B. SKINNER. } Assumpsit.

Hiram Rutherford, being duly sworn, says that the foregoing plea pleaded by defendant is true in substance and in fact.

HIRAM RUTHERFORD.

Subscribed & sworn to before me this 21st day of June, A. D. 1875.
[L. S.] GEORGE DOLE,
Notary Public.

STATE OF ILLINOIS,
Edgar County, ss:

I, A. B. Powell, clerk of the circuit court of said county, do
18 certify that Hiram Rutherford, whose name is above subscribed, appeared personally before me on the 21st day of June, A. D. 1875, and admitted his above signature to be genuine, and was by me sworn to the truth of the foregoing plea of the Town of East Oakland.

In testimony whereof I have hereunto set my hand the seal of said court this 21st day of June, 1875.
[L. S.] A. B. POWELL, *Clerk.*

(Endorsed:) Filed January 25, 1876. J. A. Jones, clerk.

And afterwards, to wit, on Tuesday, the 25th day of January, at the term and in the year last aforesaid, the following further proceedings were had in said court in said cause and entered of record, to wit:

Trial.

WILLIAM B. SKINNER
vs.
TOWNSHIP OF EAST OAKLAND. } Assumpsit.

This day comes as well the plaintiff, by Messrs. Cullom, Scholes
19 and Mather, his attorneys, as the defendant, by H. Van Sellar, esq., its attorney, and the issue joined by consent is tried by the court, a jury being waived; and the court, having heard the evidence and argument of counsel, takes the same under advisement.

And afterwards, to wit, on Saturday, the 25th day of March, at the term and in the year last aforesaid, the following further proceedings were had in said court in said-entitled cause and entered of record, to wit:

Judgment.

WILLIAM B. SKINNER
vs.
TOWNSHIP OF EAST OAKLAND. } Assumpsit.

This day come again the parties, by their attorneys, and the court, being now sufficiently advised in the premises, finds the issue for the

plaintiff, and assesses his damages to the sum of nine thousand two hundred and seven dollars and thirty-two cents, ($9,207.32.)

It is therefore ordered and adjudged by the court that the plaintiff recover of the defendant the said sum of nine thousand two hundred and seven dollars and thirty-two cents, his damages aforesaid
20 assessed, together with the sum of one hundred and fifty-eight dollars and seventy cents, his costs and charges by him about his suit in this behalf expended, and that execution issue therefor.

Whereupon defendant tenders its bill of exceptions, which is signed and sealed by the court and ordered to be made part of the record in this cause.

And then, afterwards, to wit, on the said 25th day of March, at the term and in the year last aforesaid, came said defendant, by its said attorney, and filed in said clerk's office its bill of exceptions to the judgment rendered in said cause, which said bill of exceptions is in the words and figures following, to wit:

Bill of exceptions.

Be it remembered, upon calling this cause for trial, it was agreed by the parties that under the plea of the general issue filed the defendant should have liberty to give in evidence any fact which might be lawfully pleaded in bar of the plaintiff's suit, and it was further agreed between the parties aforesaid that the cause might be tried by the court without the intervention of a jury.

And thereupon, by consent of the parties aforesaid, the court
21 heard the evidence offered by the respective parties, and found from the evidence the following facts:

1. That the defendant, The Township of East Oakland, is a township organized under the township-organization laws of the State of Illinois.

2. That the Paris and Decatur Railroad Company is a corporation of the State of Illinois, organized under an act of the general assembly of said State entitled "An act to incorporate the Paris and Decatur Railroad Company," approved February 18, 1861, with authority to construct, maintain, and operate a railroad from the town of Paris to the town of Decatur, in said State.

3. That by the 5th section of said act it is provided that "said corporation shall cause books to be opened for subscriptions to the capital stock thereof, to be divided into shares of fifty dollars each, at such times and places as they may choose, and shall give at least thirty days' notice thereof by publication in a newspaper published in the town or city where said books may be opened, and if there be no newspaper published therein, then in the nearest newspaper thereto. It shall be lawful for all persons of lawful age or for the agent of any corporate body to subscribe any amount to the capital stock of said company."

22 4. That on the 30th day of December, 1869, intending to proceed under the authority of the said 5th section of said act, and also under and in pursuance of the township-organization law of the State of Illinois, a statement in writing, signed by the supervisor, the town clerk, a justice of the peace, and twelve freeholders of said township, was filed in the office of the town-clerk of said township, in substance as follows:

Petition for special town-meeting.

STATE OF ILLINOIS,
Coles County, East Oakland Township, ss:

We, the undersigned, township officers and twelve freeholders of East

Oakland Township, county and State aforesaid, do state that a special town-meeting is necessary to the interest of said township, for the purpose following, (to wit,) to vote for or against the supervisor of East Oakland Township as its agent to subscribe the sum of seventy-five thousand ($75,000) dollars to the stock of the Paris and Decatur Railroad Company, and to authorize the said supervisor of East Oakland Township, as agent, to issue the bonds of said township of East Oakland in payment of said stock; said bonds to mature in ten years from date of
23 issue, bearing interest from date of delivery to the Paris and Decatur Railroad Company at the rate of ten per cent. per annum, said interest to be due and payable annually; said bonds to be in amounts not exceeding five hundred dollars each, to be donated, together with said stock, to aid in constructing said railroad. Said bonds to be delivered to said company when a locomotive-engine and train of cars shall pass over said railroad through the county of Coles and township of East Oakland, and within one-quarter of a mile of the public square of the town of Oakland, and shall build a depot and switch within the corporate limits of the said town, and shall be completed within three years, and authorizing the county clerk of Coles County to levy a tax annually on said township of East Oakland for the payment of the interest of said bonds annually until said bonds are paid. Said bonds are to be issued and delivered to and held in trust by such person or persons as shall be mutually agreed upon between the authorities of said township of East Oakland and the said company, and to be delivered to the said company upon the conditions hereinbefore mentioned, and not otherwise *as* before, provided that if the said proposition for seventy-five thou-
24 sand dollars shall carry and be voted for, the proposition for fifty thousand dollars submitted & carried by a majority vote of the township on the twenty-first day of September last shall be void, and the supervisor of East Oakland Township shall not then issue the bonds on the said fifty thousand dollars so voted on the said twenty-first day of September, A. D. 1869; otherwise, if the proposition for seventy-five thousand be voted against, then the said supervisor of East Oakland Township is further authorized to issue the bonds to the said company on the said fifty-thousand-dollars proposition, according to the provisions set forth in the said proposition. We would therefore request that immediate notice be given thereof, and that such meeting be held on the 25th day of January, A. D. 1870.

Witness our hands this 7th day of December, A. D. 1869.

M. B. VALODIN, *Supervisor.*
J. S. YEARGIN, *Town-Clerk.*
JOSEPH V. RAKE, *Justice of the Peace.*

G. H. McCONKEY,
D. W. MITCHELL,
M. F. MILLER,
S. M. CASH,
25 GEORGE WEAVER,
H. C. KURTZ,
S. A. REEL,
H. D. WILLIAMS,
WM. A. BROODIS,
DAVID WINKLER.
I. S. CASH,
THOS. R. ODELL,
J. RUTHERFORD,
J. J. PEMBERTON,
Twelve Freeholders.

STATE OF ILLINOIS,
Coles County, Town of East Oakland:

I, James S. Yeargin, town clerk of the town of East Oakland, in the county aforesaid, do hereby certify that the foregoing is a true copy of

the matters and things herein stated, as appears from the books and papers now on file in my office.

Witness my hand at Oakland, in Coles County, this 14th day of June, A. D. 1875.

JAMES S. YEARGIN, [L. S.]
Town Clerk.

And that, on the said 30th day of December, 1869, the town clerk posted, as required by the township-organization law, notices in substance as follows:

Election notice.

Whereas the supervisor, town clerk, and justice of the peace, together with twelve freeholders of the town of East Oakland, have in
26 writing filed in my office a statement that a special town meeting is necessary to the interest of said town, setting forth the objects of the meeting, the inhabitants, legal voters of said town of East Oakland, are therefore hereby notified that a special town meeting will be held at the office of the town clerk, in the town of East Oakland, on Tuesday, the 1st day of February, A. D. 1870, at 9 o'clock a. m., for the purpose following, (to wit:) To vote for or against authorizing the supervisor of said town of East Oakland, as its agent, to subscribe the sum of seventy-five thousand ($75,000) dollars to the stock of the Paris and Decatur Railroad Company, (with the understanding that, if this proposition carries, then the proposition voted on the 21st day of September last for fifty thousand dollars to be void,) and to authorize the said supervisor, as agent of the town of East Oakland, to issue the bonds of the said township of East Oakland in payment of said stock, said bonds to mature in ten years from date of issue, bearing interest from date of delivery to the Paris and Decatur Railroad Company at the rate of ten per cent. annually; said bonds to be in amounts not exceeding five
27 hundred dollars each, to be donated, together with said stock, to aid in the construction of said railroad; said bonds to be delivered to said company when a locomotive-engine and train of cars shall pass over said railroad through the county of Coles, and not otherwise, *as* before, provided said railroad shall pass through the township of East Oakland and within 80 rods of the public square of the town of Oakland, and be completed within three years, and to authorize the county clerk of Coles County to levy a tax annually on said town of East Oakland for the payment of the interest of said bonds annually until said bonds are paid, said bonds to be issued and delivered to and held in trust by such person or persons as shall be mutually agreed upon between the authorities of said town of East Oakland and the said company, and to be delivered to the said company upon the condition hereinbefore mentioned, and not otherwise or before, being the objects contained in the said statement filed in my office.

Given under my hand, at Oakland, this 30th day of December, A. D. 1869.

JAMES S. YEARGIN,
Town Clerk.

28 5. And that at a special town meeting held in said township on the first day of February, 1870, one hundred and eighty-six votes were cast, and the record of such election was certified by moderator of said meeting and the town clerk, as follows:

Minutes of town meeting.

STATE OF ILLINOIS,
Coles County, Town of East Oakland:

We hereby certify that at a special town meeting, held at East Oakland on the first day of February, 1870, the proposition to subscribe seventy-five thousand dollars to the Paris and Decatur Railroad received one hundred and sixty-nine votes, and seventeen votes against.

CHARLES CLEMENT,
Moderator.
C. R. HACKETT, *Clerk.*

6. And the court further found that on the 15th day of August, 1870, Charles Clement, supervisor of the said township of East Oakland, and as agent for said township, acting by the authority of the 5th section of the act to incorporate the Paris and Decatur Railroad Company, and of the proceedings and vote of said special town meeting, made a
29 subscription, on behalf of said township of East Oakland, to the capital stock of the Paris and Decatur Railroad Company, upon the books of said company, in substance as follows:

Whereas at an election on the first day of February, A. D. 1870, in the town of East Oakland, county of Coles, and State of Illinois, the supervisor of said township was duly elected agent of said town of East Oakland to subscribe the sum of seventy-five thousand dollars to the capital stock of the Paris & Decatur Railroad Company, in shares of fifty dollars each, in accordance with the provisions of the charter of said company, obtained on the 18th day of February, A. D. 1861, upon the following conditions and stipulations, to wit:

Said supervisor, as agent of the town of East Oakland, to subscribe the sum of seventy-five thousand ($75,000) dollars to the capital stock of the Paris & Decatur Railroad Company, and to issue the bonds of the said town of E. Oakland in payment of said stock, said bonds to mature in ten years from date of issue, bearing interest from date of delivery, to the Paris & Decatur Railroad Company, at the rate of
30 ten per centum, payable annually; said bonds to be in amounts not exceeding five hundred dollars each, to be donated, together with said stock, to aid in constructing said roilroad; said bonds to be delivered to said company when a locomotive-engine and train of cars shall pass over said railroad through the county of Coles, and not otherwise or before, provided said railroad shall pass through the township of E. Oakland, and within eighty (80) rods of the public square of the town of Oakland, and to be completed within three years; said bonds to be issued and delivered to and held in trust by such person or persons as shall be mutually agreed upon between the authorities of said town of East Oakland and the said company, and to be delivered to the company upon the conditions hereinbefore mentioned, and not otherwise or before.

Now, therefore, by virtue of the authority vested in me, I, Charles Clement, supervisor and agent of the town of East Oakland, county and State aforesaid, do subscribe one thousand & five hundred shares, of fifty dollars each, being seventy-five thousand dollars as aforesaid, to the capital stock of the Paris & Decatur Railroad Company.

31 In witness whereof I have hereunto set my hand and seal this the 15th day of August, A. D. 1870.

CHARLES CLEMENT,
Supervisor and Agent of the Town of East Oakland.

Attest:
J. J. PEMBERTON.

7. And the court further found, from the evidence aforesaid, that on the 21st day of April, 1871, M. B. Valodin, J. J. Pemberton, and D. W. Mitchell made a bond, under their hands and seals, in the words and figures following:

Know all men by these presents that I, Milton B. Valodin, of the town of East Oakland, county of Coles, and State of Illinois, M. B. Valodin, principal, and J. J. Pemberton and D. W. Mitchell, sureties, town, county, and State aforesaid, are held and firmly bound unto the Paris and Decatur Railroad Company and the people of East Oakland, township aforesaid, their certain attorney, successor, or assigns, to which payment, well and truly to be made, we bind ourselves firmly by these presents.

The condition of this obligation is such, that whereas the township of East Oakland aforesaid, in the county of Coles, and State of Illi-
32 nois, did, upon the 21st day of April, A. D. 1871, place in the hands of Milton B. Valodin aforesaid seventy-five thousand ($75,000) dollars of the bonds of East Oakland Township, to be held in trust for the use of said railroad company, to be delivered to said railroad company, or their order, upon the following condition, viz:

That upon the completion of said railroad, as aforesaid, said Valodin shall deliver to the holders of the orders for bonds an amount of said bonds equal in the aggregate to the amount of orders so issued for work done on said railroad in the township of East Oakland, or to be issued and presented to him at the time or before the completion of the said railroad as aforesaid; said bonds to be delivered to said company when a locomotive-engine and train of cars shall pass over said railroad through the county of Coles, and not otherwise or before, provided said railroad shall pass through the township of East Oakland, and within eighty (80) rods of the public square of said town of Oakland, and be completed within three years from February 1st, 1870; and further provided that said trustee shall cancel coupons to an amount
33 equal to the accumulated interest on said bonds at the time of delivery to the company in accordance with conditions hereinbefore mentioned; and further provided that if said railroad shall not be built through said county on or before the first day of February, A. D. 1873, then the said trustee shall deliver said bonds to the authorities of said town of East Oakland:

Now, if the said Milton B. Valodin, trustee, shall well and truly deliver to said Paris & Decatur Railroad Company, their order, their successors, or assigns, said township bonds in the manner aforesaid, keeping a true record of the same, or to the said township authorities of said township of East Oakland upon the failure of said railroad company to build said railroad through said county on or before the first day of February, 1873, then this obligation to be null and void; otherwise to remain in full force and virtue.

In witness whereof we have hereunto set our hands and seals this the 21st day of April, in the year of our Lord one thousand eight hundred and seventy-one.

M. B. VALODIN. [L. S.]
J. J. PEMBERTON. [L. S.]
D. W. MITCHELL. [L. S.]

34 And then and there delivered the same to the supervisor of said township of East Oakland, and at the same time the supervisor of East Oakland Township made bonds to the amount of seventy-five thousand dollars, in form and substance as follows:

No. 292.] UNITED STATES OF AMERICA. [$500.

STATE OF ILLINOIS,
County of Coles, Township of East Oakland:

Know all men by these presents that the township of East Oakland, in the county of Coles, and State of Illinois, acknowledges itself to owe and be indebted in the sum of five hundred dollars, lawful money of the United States of America, which sum the said township of East Oakland promises to pay to the Paris and Decatur Railroad Company, or bearer hereof, at the Security Bank of the city of New York, ten years from the first day of March, 1871, with interest at the rate of ten per centum per annum, payable annually at said bank upon presentation and delivery of the several coupons hereto annexed as they respectively become due, and to the payment of said principal and interest
35 in the manner aforesaid the faith and revenue of said township of East Oakland is irrevocably pledged.

This bond is issued in pursuance of an election held in said township of East Oakland on the 1st day of February, 1870, at which election the supervisor of said township of East Oakland was duly elected agent of said township of East Oakland to subscribe the sum of seventy-five thousand dollars to the capital stock of the Paris and Decatur Railroad Company, and to issue the bonds of said township in payment of said stock, to aid in the construction of said railroad, and by virtue of an act of the legislature of said State of Illinois entitled "An act to incorporate the Paris and Decatur Railroad Company," approved February 18th, 1861.

In witness whereof the supervisor, as agent of said township, has hereunto set his hand and seal this the 20th day of April, A. D. 1871.

CHARLES CLEMENT, [L. S.]
Supervisor and Agent.

J. F. YEARGIN, *Clerk.*

On back of bond is this certificate:

36 SPRINGFIELD, *April 11th*, 1872.

I, Charles E. Lippencott, auditor of public accounts of the State of Illinois, do hereby certify that the within bond has been registered in this office this day, pursuant to the provisions of an act entitled "An act to fund and provide for paying the railroad debts of counties, townships, cities, and towns in force April 16, 1869."

In testimony whereof I have hereunto subscribed my name and affixed the seal of my office the day and year aforesaid.

[L. S.] C. C. LIPPENCOTT,
Auditor P. A.

With interest coupons attached, substantially as follows:

$50.] [No. 229.

The township of East Oakland will pay to bearer, on the 1st day of March, A. D. 1875, at the Security Bank of the city of New York, fifty dollars, being one year's interest on bond as numbered above.

CHARLES CLEMENT,
Supervisor and Agent.

J. S. YEARGIN, *Clerk.*

And delivering the bonds and coupons aforesaid to the said M. B. Valodin, to be held and disposed of by him according to the conditions of said bond.

37 8. And it was further found by the court that afterwards the said Paris and Decatur Railroad did build its railroad through the township of East Oakland, and constructed a switch and depot therein, within the time and in the manner provided and required by the terms of the subscription to its capital stock made on the 15th day of August, 1870, by the said Charles Clement, supervisor, on behalf of said township, and thereupon the said M. B. Valodin delivered all of the said bonds and coupons so deposited with him by the said Clement to the Paris and Decatur Railroad Company.

9. And the court further found that the said Paris and Decatur Railroad Company never did in fact issue or deliver to the township of East Oakland, or to any person for said township, any of the shares of its capital stock, but claims to hold, and does hold, all the shares of its capital stock subscribed for by the said Charles Clement, supervisor and agent as aforesaid, on behalf of said township, as a donation to said company in aid of the construction of said railroad, according to the terms of said subscription.

38 10. And the court further found that the assessed and equalized valuation of all the taxable property in the township, as made for State and county taxation, was

For the year 1869	$267,019
For the year 1870	$263,423
For the year 1871	$268,430

11. And the court further found that the plaintiff is the holder for value of three hundred and sixty-two interest-coupons made by the said Charles Clement, supervisor as aforesaid, with the said bonds for interest thereon so made by him on behalf of the said township of East Oakland on the 21st day of April, 1871, for and in payment of the subscription to the capital stock of said railroad company, and that the said plaintiff acquired the same before maturity; that fifty-eight of said coupons are for the sum of fifty dollars, and are in substance as follows:

$50.] [No. 213.

The Township of East Oakland will pay to bearer, on the 1st day of March, A. D. 1874, at the Security Bank of the city of New York,
39 fifty dollars, being one year's interest on bond as numbered above.

CHARLES CLEMENT,
Supervisor and Agent.

J. S. YEARGIN, *Clerk.*

One hundred and twenty-two of ten dollars each, due March 1, 1874; fifty-nine of $50 each, due March 1, 1875, and 123 of $10 each, due March 1, 1875, and that one or two years' interest on said bonds had been paid by the treasurer of the State of Illinois from the proceeds of taxes levied by the auditor of public accounts upon the taxable property of said township under an act of the general assembly of the State of Illinois entitled "An act to fund and provide for paying the railroad debts of counties, townships, cities, and towns in force April 16, 1869."

And the foregoing being all the facts proved, the said court then and there, upon the facts aforesaid, specially found—

1. That the said Township of East Oakland, the defendant, is a "corporate body" within the true intent and meaning of the said 5 section

of the act of the general assembly of the State of Illinois entitled "An act to incorporate the Paris and Decatur Railroad Company."

40 2. That the special town-meeting in the town of East Oakland on the first day of February, 1870, was a lawful town-meeting, and that, by the vote of one hundred and sixty-nine of the legal voters of the town of East Oakland for the proposition to subscribe seventy-five thousand dollars to the Paris and Decatur Railroad Company and seventeen votes against said proposition, the supervisor of said town was appointed, and then and there became, the agent of said township, with full power and authority, on behalf of said township, to subscribe for the sum of seventy-five thousand dollars of the shares of the capital stock of the said Paris and Decatur Railroad Company.

3. That the power of the said town of East Oakland and of the supervisor of said township, as the agent thereof to subscribe to the capital stock of the said Paris and Decatur Railroad Company, was in nowise impaired or affected by the separate article of the constitution of the State of Illinois entitled municipal subscriptions to railroads or private corporations, which took effect on the 2nd day of July, 1870.

4. That the subscription made by Charles Clement, supervisor
41 and agent of the township of East Oakland, and for and on behalf of said township, on the 15th day of August, 1870, of the sum of seventy-five thousand dollars to the capital stock of the Paris and Decatur Railroad Company, was a legal and valid subscription within the scope of his authority as agent, and *a* binding upon the said township of East Oakland, notwithstanding any condition upon which said subscription was made.

5. That the execution and delivery of the sum of seventy-five thousand dollars of the bonds and coupons of said township of East Oakland to M. B. Valodin by the said Charles Clement, agent as aforesaid, and delivery of the same bonds and coupons by the said Valodin to the Paris and Decatur Railroad Company, upon the fulfilment of the conditions of said subscription, is in effect as if said bonds and coupons had been made and delivered by the said Clement directly to the Paris and Decatur Railroad Company, and the said Charles Clement had due and sufficient authority, as agent of the township, to make and deliver the said coupons.

And the court further found that the coupons offered in evi-
42 dence by the plaintiff were lawfully issued by and on behalf of the defendant, and for the interest on the said bonds, and the township of East Oakland by the said Charles Clement, its agent lawfully authorized, and that the said township, notwithstanding any other matter or fact found by the court, is bound by the same, and therefore the court found the issue of law and of fact for the plaintiff, and assessed his damages at the sum of nine thousand two hundred and seven dollars and thirty-two cents, ($9,207.32.)

And the said defendant then and there, by his counsel, objected to the several findings, rulings, and judgment of the court; and because its several objections thereto were overruled by the court, then and there excepted, and excepts and prays that this its bill of exceptions may be signed and sealed by the court and made part of the record, which is done accordingly.

S. H. TREAT. [SEAL.]

(Endorsed:) Filed March 25th, 1876. J. A. Jones, clerk.

43 And then, afterwards, on the 8th day of April, in the year last aforesaid, came said defendant and filed in said clerk's office its bond on the writ of error; which said bond is in the words and figures following, to wit:

Bond on writ of error.

WILLIAM B. SKINNER
vs.
THE TOWNSHIP OF EAST OAKLAND. } Assumpsit. Bond.

Know all men by these presents that we, The Township of East Oakland, as principal, and Gideon Minor and John W. Reed, as sureties, are held and firmly bound unto William B. Skinner in the penal sum of one thousand dollars, to be paid to the said William B. Skinner, his executors or administrators, to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals and dated this 8th day of April, A. D. 1876.

Whereas the above-named The Township of East Oakland hath prosecuted a writ of error to the Supreme Court of the United
44 States to reverse the judgment rendered in the above-entitled suit by the circuit court of the United States for the southern district of Illinois:

Now, therefore, the condition of this obligation is such, that if the above-named The Town of East Oakland shall prosecute its said writ of error to effect and without delay, and answer all damages and costs if it shall fail to make good its plea, then this obligation shall be void; otherwise the same shall remain and be in full force and virtue.

THE TOWN OF EAST OAKLAND,
By HIRAM RUTHERFORD, *Supervisor.*
JAMES S. YEARGINS, *Town-Clerk.*
JOHN W. REEDS. [L. S.]
GIDEON MINOR. [L. S.]

Approved.

S. H. TREAT,
Dist. Judge.

(Endorsed:) Filed Oct. 7th, A. D. 1876. J. A. Jones, clerk.

45 UNITED STATES OF AMERICA,
Southern District of Illinois, ss:

I, John A. Jones, clerk of the circuit court of the United States within and for the southern district of Illinois, do hereby certify that the foregoing is a true and correct copy of all the papers filed and proceedings had thereon in a certain cause lately pending in said court wherein William B. Skinner is the plaintiff and The Township of East Oakland is the defendant, as fully and completely as the same appear of file and of record in my said office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Springfield, in said district, this twenty-first day of September, in the year of our Lord one thousand eight hundred and seventy-six, and of our Independence the one hundred and first year.

[SEAL.] J. A. JONES, *Clerk.*

(Indorsement on cover:) No. 927. The Township of East Oakland, plaintiff in error, vs. William B. Skinner. S. Illinois C. C. U. S. Filed 14th November, 1876.

REC. 927—2

IN THE

Supreme Court of the United States.

THE TOWNSHIP OF EAST OAKLAND,

Plaintiff in Error,

vs.

WILLIAM B. SKINNER,

Defendant in Error.

Brief of John M. Palmer,

FOR PLAINTIFF IN ERROR.

Rokker's Printing House, Springfield, Ill.
1876.

IN THE

Supreme Court of the United States.

THE TOWNSHIP OF EAST OAKLAND,
Plaintiff in Error,

vs.

WILLIAM B. SKINNER,
Defendant in Error.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

STATEMENT OF THE CASE.

The defendant in error brought his suit in the Circuit Court of the United States for the Southern District of Illinois, against The Township of East Oakland, a township organized under the Township Organization Laws of the State of Illinois, to recover the amount of certain interest coupons issued with certain bonds by one Charles Clement, Supervisor, and who claimed to be the agent of the township of East Oakland, duly authorized, under the circumstances hereinafter mentioned, to subscribe for fif-

teen hundred shares of the capital stock of the Paris and Decatur Railroad Company.

The case was tried by the Court without a jury, and the Judge found specially—

—That the Paris and Decatur Railroad Company was incorporated by the Legislature of Illinois by an act approved February 18, 1861. (*Session Laws* 1861, *p.* 509.)

The material part of this act is the fifth section, page 511, which is in the following words: "Said corporation shall cause books to be opened for subscriptions to the capital stock thereof, to be divided into shares of fifty dollars each, at such times and places as they may choose, and shall give at least thirty days notice thereof by publication in a newspaper published in the town or city where said books may be opened; and if there be no newspapers published therein, then in the nearest newspaper thereto.

"It shall be lawful for all persons of lawful age, or for the agents of any corporate body, to subscribe any amount to the capital stock of said company."

This charter remained in abeyance, as it seems, until the latter part of the year 1869, when it was conceived by certain parties, that under said fifth section of the act of February 18, 1861, the townships along or near the line of the proposed railroad might be brought to aid in its construction.

To give effect to this plan, on the 30th day of December, 1869, certain persons presented a written request to the Town Clerk of the town of East Oakland for a special town meeting in said town, to vote for or against a proposition: that the Supervisor of East Oakland township be authorized, as its agent, to subscribe seventy-five thousand

dollars to the capital stock of the Paris and Decatur Railroad Company; and to authorize said Supervisor, as such agent, to issue the bonds of the township in payment for the stock, the bonds to mature in ten years from the date of their issue, bearing interest from the date of their delivery to the Paris and Decatur Railroad Company, at the rate of ten per cent. per annum, payable annually; said bonds to be in amounts not exceeding five hundred dollars each, to be *donated*, together with said stock, to aid in constructing said railroad. Record, pp. 9–10.

The Town Clerk, as requested, gave notice for a special town meeting, to be held on the first day of February, 1870, to vote on the proposition before stated, and the result of the vote cast is certified by the Moderator and Town Clerk, "the returning officers" of the township, as follows:

"We hereby certify that at a special town meeting held at East Oakland, on the first day of February, 1870, the proposition to subscribe seventy-five thousand dollars to the Paris and Decatur Railroad received one hundred and sixty-nine votes, and seventeen votes against." Record, page 12.

On the fifteenth day of August, 1870, after the adoption of the separate article of the Constitution of the State of Illinois, in relation to municipal subscriptions to the capital stock of railroad corporations, and the 12th section of article IX of the State Constitution, Charles Clements, Supervisor, and claiming to be the agent of the township under the vote of February 1, 1870, signed an entry upon the books of the Paris and Decatur Railroad Company, in substance as follows:

"Whereas, at an election on the first day of February, A. D. 1870, in the town of East Oakland, county of Coles,

and State of Illinois, the Supervisor of said township was duly elected agent of said town of East Oakland, to subscribe the sum of seventy-five thousand dollars to the capital stock of the Paris and Decatur Railroad Company, in shares of fifty dollars each, in accordance 'with the provisions of the charter of said company.' * * * Said Supervisor, as agent of the town of East Oakland, to subscribe the sum of seventy-five thousand dollars to the capital stock of the Paris and Decatur Railroad Company, and to issue the bonds of the said town of East Oakland in payment of said stock; said bonds to mature ten years from date of issue, bearing interest from date of delivery to the Paris and Decatur Railroad Company at the rate of ten per cent., payable aunually; said bonds to be in amounts not exceeding five hundred dollars each, to be donated, together with said stock, to aid in construction of said railroad."

On the 21st day of April, 1871, Charles Clements, Supervisor, and still claiming to be the agent of the township, issued and delivered the bonds and coupons sued on to the Paris and Decatur Railroad Company, and the defendant in error claims to be a bona fide holder for value.

The bonds were made payable to "The Paris and Decatur Railroad Company, or bearer," and contained, in addition to the usual promise to pay, the following recitals:

"This bond is issued in pursuance of an election held in said township of East Oakland on the first day of February, 1870, at which election the Supervisor of said township of East Oakland was duly elected agent of said township of East Oakland, to subscribe the sum of seventy-five thousand dollars to the capital stock of the

Paris and Decatur Railroad Company, and to issue the bonds of said township in payment of said stock, to aid in the construction of said railroad, and by virtue of an act of the Legislature of the State of Illinois, entitled 'An act to incorporate the Paris and Decatur Railroad Company,' approved February 18th, 1861."

"The Court further found that the value of the taxable property in the township of East Oakland, is as follows:

For the year 1869	$267,019
For the year 1870	263,423
For the year 1871	268,430

And it was found further, that the railroad company never issued any stock to the town of East Oakland, but claimed and accepted the bonds and coupons referred to as a donation to aid in the construction of its road." Record, page 15.

The Court, upon the facts found and as stated, held:

1st. That the township of East Oakland is a corporate body within the true intent and meaning of the 5th section of the act to incorporate the Paris and Decatur Railroad Company.

2d. That the vote of the town meeting held on the first day of February, 1870, for the subscription of seventy-five thousand dollars to the capital stock of the Paris and Decatur Railroad Company, was a sufficient appointment of the said Clements, as agent of the township, to make such subscription, and issue, on behalf of the township, its bonds in payment for such stock; and that the vote of the township was sufficient to take the subscription and issue of bonds out of the prohibitory effect of the 12th section of article IX, and the separate article of the State Constitution in respect to municipal subscriptions to railroads or private corporations.

The defendant below excepted to the rulings of the Court, and prosecuted a writ of error.

BRIEF OF JOHN M. PALMER,

OF COUNSEL FOR PLAINTIFF IN ERROR.

As will be observed, the defendant in error rests his right to recover the amount of the coupons sued on, solely upon what he claims to be the proper construction of a part of the fifth section of the act to incorporate the Paris and Decatur Railroad Company: "It shall be lawful for all persons of lawful age, or for the agent of any corporate body, to subscribe any amount to the capital stock of said company."

The defendant in error maintains that the township of East Oakland is a corporate body within the meaning of the words quoted above.

As opposed to this construction, we urge the authority of the decision of the Supreme Court of Illinois upon the very point in question.

In the case of Campbell et al. vs. The Paris and Decatur Railroad Company, January term, 1874, not yet reported, the Court say:

"A copy of the charter was filed with the bill as an exhibit, and in the fifth section there is this language:

" 'It shall be lawful for all persons of lawful age, or for the agent of any corporate body, to subscribe any amount to the capital stock of said company.'

"This is the only provision in the charter in reference to subscriptions by either persons or corporations. It con-

fers no power on municipal corporations to subscribe for such stock. The provision, manifestly, refers to private corporations when it authorizes agents to subscribe. It does not refer to counties, cities, towns or townships, and cannot be held to embrace them.

"No power is conferred to call the elections, or for the town officers to make the subscriptions, or to issue them, or any other bonds."

This decision must be taken as conclusive. It falls within the rule stated by Cooley:

"The same reasons which require that the final decision of all questions of national jurisdiction should be left to the national courts, will also hold the national courts bound to respect the decisions of the State courts upon all questions arising under State constitutions and laws, where no question of national authority is involved; and to accept these decisions as correct, and to follow them whenever the same questions arise in the national courts." —*Constitutional Limitations, p.* 13.

The rule thus stated by Cooley has been followed by this Court in numerous cases, and is thus stated in Leffingwell *vs.* Warren, 2 Black, 603, as the result of all the authorities:

"The construction given to a statute of a State by the highest judicial tribunal of such State, is regarded as a part of the statute, and is as binding upon the courts of the United States as the text."

And the rule has again been stated by this Court, together with its exceptions, in the case of The Town of Elmwood vs. Marcy, October term, 1875, thus:

"We have always followed the highest Court of the State in its construction of its own constitution and laws.

It is only where they have been construed differently at different times, that, in cases like this, we have adopted as a rule of action the first decision, and rejected the last. This has been done on the ground that rights acquired on the strength of former decisions ought not to be lost by a change of opinion in the Court.

"But when the construction has been fixed by an unbroken series of decisions, the federal courts accept and apply it in cases before them."

In this case, as in the one last cited, "there has been no conflict of judicial opinion in Illinois upon the controlling question in the suit." Upon the contrary, the decision of the Supreme Court of Illinois referred to, is made upon the precise statute in question, and gives it a construction which is fatal to the claims of the defendant in error to recover against the plaintiff.

The Supreme Court of Illinois, in addition to the authority upon the point in question, in a sentence demonstrates the impossibility of the theory that the words of the statute include, or refer to, townships.

"No power is conferred to call the election (for an agent), or for the town officers to make the subscriptions, or to issue these or any other bonds."

Townships, in Illinois, have no express or implied authority to subscribe for shares of the capital stock of railroad corporations, or to issue bonds in payment for such stock; nor are any of the officers of such townships in possession of the general power to act in the name of the corporation in the execution of contracts; nor is there any statute which authorizes the election or appointment of an agent for such purpose.

The statute must therefore be held to include only such corporate bodies as have authority to make such subscriptions, and to appoint agents for that purpose.

The only purpose of the 5th section of the act was to authorize the Paris and Decatur Railroad Company to receive subscriptions to its capital stock.

Legislative authority is necessary to the creation of a capital stock, to its division into shares, and for the sale of such shares. Such authority may, in some instances, be implied; but it is not the less true that the power required for such corporate acts must be referred to legislative creation.

The section requires that books shall be opened by the corporation to receive subscriptions to its capital stock, fixes the amout of the shares, directs the manner in which notice shall be given, and then, in effect, provides that persons competent to subscribe for shares may lawfully claim the right to do so, *to any amount*.

That this is the proper meaning of the words in question is clear, from their connection with those that precede them, and from the further consideration, that in any other view the first member of the sentence—"It shall be lawful for all persons of lawful age, *to subscribe any amount to the capital stock of the company*"—would be wholly inoperative.

Indeed, the words, "*or the agent of any corporate body*," can only be sensible when they are read in connection with the words that are intended to forbid the company from imposing any limit upon the right of the agent in respect to the *amount* to be subscribed.

The separate article of the State Constitution, in relation

to municipal subscriptions to the capital stock of railroad companies, is as follows:

"No county, city, town, township or other municipality shall ever become subscriber to the capital stock of any railroad or private corporation, or make donation to, or loan its credit in aid of such corporation.

"*Provided, however*, that the adoption of this article shall not be construed as affecting the right of any such municipality to make such subscriptions when the same have been authorized under existing laws by a vote of the people of such municipalities prior to such adoption."

This separate article was adopted and took effect on the 2d day of July, 1870.

Richards et al. vs. Donagho, 66 *Ill.*, 73.

Section 12, article IX, of the State Constitution, is as follows:

"No county, city, township, school district or other municipal corporation, shall be allowed to become indebted in any manner, or for any purpose, in an amount, including existing indebtedness, in the aggregate exceeding five per centum on the value of the taxable property therein, to be ascertained by the last assessment for State and county taxes previous to the incurring such indebtedness. * * * * This section shall not be construed to prevent any county, city, township, school district or other municipal corporation, from issuing their bonds in compliance with any vote of the people which may have been had prior to the adoption of this constitution in pursuance of any law providing therefor."

The Constitution was adopted August 8, 1870.

It is a fact, found by the Court, that the taxable property of the township was about the same for the years 1869,

1870 and 1871, and that it was not of an amount sufficient to authorize the township to incur a debt of $75,000.

It further appears that there was no subscription made for stock until August 15, 1870, and the bonds and coupons were not issued until April 21st, 1871.

If, as we maintain, the vote of the people at the special town meeting held February 1st, 1870, was merely voluntary, and not "A vote of the people had prior to the adoption of the Constitution *in pursuance of a law providing for such vote*," as contemplated by the 12th section of the 9th article of the Constitution, then the bonds and coupons issued on that behalf are void, as within the prohibition imposed upon municipal corporations by that section.

And it follows, also, as we further maintain, that the vote being merely voluntary, it cannot be held to be a vote of the people under existing laws authorizing such subscription, within the proviso of the separate article of the Constitution.

It is admitted that if the proposition is correct, that the vote cast on the first day of February, 1870, was merely voluntary on the part of the voters, and without the sanction of law, it conferred no authority upon the supposed agent, either to subscribe for stock on behalf of the township or to issue its bonds, and there would be no occasion to invoke the constitutional provisions cited to support a defence against them.

Our proposition is, that the vote did not create an agency in Clements to subscribe for the stock, and could not, even upon the defendant's construction of the act, authorize him to issue bonds in payment; for the statute does not authorize the agent of any corporate body to contract debts in its name.

The attention of this Court is called, also, to the fact that it was found by the Court below, "That the Paris and Decatur Railroad Company never did, in fact, issue or deliver to the township of East Oakland, or to any person for said township, any of the shares of its capital stock, but claims to hold, and does hold, all the shares of its capital stock subscribed for by said Charles Clements, Supervisor and agent as aforesaid, on behalf of said township, as a *donation* to said company in aid of the construction of said railroad according to the terms of said subscription."

If further argument or citation of authorities were necessary to demonstrate the invalidity of the bonds and coupons in question, the finding, that they were issued under the circumstances as a *donation*, would be sufficient to fix that character upon them.

This Court has considered and declared the effect to be given to that clause of the separate article of the State Constitution which forbids *donations* by municipalities in aid of the construction of railways, and the facts of this case bring it clearly within the constitutional provision referred to, as interpreted by this Court.

See Town of Concord vs. Portsmouth Savings Bank, decided at October term, 1875.

The defendant in error can claim nothing as against the plaintiff upon the theory that he is a bona fide holder of the securities sued on.

1. Because, as has been shown, there was no original authority to issue the bonds or coupons.

2. Because the recitals of the bonds refer him to the act of February 18, 1861, as the source of the alleged authority of the Supervisor to issue them.

3. Because the same recitals refer to the election held on the first day of February, 1870, as the source of the alleged authority of the alleged agent.

The agency claimed is special, and the bonds refer by recital to the source of the authority, and is notice of all defects of authority in the agent.

The defendant in error took the paper with notice, and is chargeable with all the consequences which follow notice.

The objections urged to the validity of the bonds, go to the existence of the *power* to issue them; and this want of power may be shown in whatever hands they may be found.

For the reasons suggested, we submit that the judgment of the Court below is erroneous, and should be reversed.

JOHN M. PALMER,
For Plaintiff in Error.

No. *Agenda No.*

SUPREME COURT

OF THE UNITED STATES.

THE TOWNSHIP OF EAST OAKLAND,

Plaintiff in Error,

vs.

WILLIAM B. SKINNER,

Defendant in Error.

Brief for Plaintiff.

Filed ..... 1876.

..... Clerk.

JOHN M. PALMER,

Counsel for Plaintiff.

IN THE

Supreme Court of the United States.

THE TOWNSHIP OF EAST OAKLAND,

Plaintiff in Error,

vs.

WILLIAM B. SKINNER,

Defendant in Error.

CULLOM, SCHOLES & MATHER,

AND

HAY, GREENE & LITTLER,

Attorneys for Defendant in Error.

Rokker's Printing House, Springfield, Ill.

1876.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1876.

BRIEF AND ARGUMENT FOR DEFENDANT IN ERROR.

THE TOWNSHIP OF EAST OAKLAND,
Coles county, Illinois,
Plaintiff in Error,
vs.
WILLIAM B. SKINNER,
Defendant in Error.

NUMBER 927.

We insist, on behalf of Defendant in Error, that the fifth section of the charter of the Paris and Decatur Railroad Company conferred the power to issue the bonds and coupons in controversy in this case.

If the Township of East Oakland had power to subscribe and issue these bonds, then we think we can clearly show that the constitutional provisions referred

to by plaintiff in error have no bearing upon this case, because this subscription is protected by the *provisos* to those provisions.

The section of the Paris & Decatur Railroad Co. in question, says: "It shall be lawful for all persons of "lawful age, or for the agent of any corporate body, to "subscribe any amount to the capital stock of said com- "pany."

Does not this provision confer the power upon a township to subscribe?

We are told by plaintiff in error, it does not, *because* the Supreme Court of Illinois has decided that it does not, and this Court is bound, say they, by the construction given to a law of Illinois by its own Supreme Court.

Whether this Court is bound by a decision of the Supreme Court of Illinois, in this particular, depends upon circumstances.

The doctrine of this Court upon the point is, that it is not concluded by decisions of the State Court, regarding these bonds, where those decisions are rendered *after* the bonds are issued and in the hands of purchasers.

Dillon on M. C., 1st Vol., Sec. 416.
Gelpcke vs. Dubuque, 1 Wall., 175.
Havemeyer vs. Iowa county, 3 Wall., 294.
Thompson vs. Lee county, 3 Wall., 327.
Lee county vs. Rogers, 7 Wall., 181.
Butz vs. Muscatine, 9, Wall., 571.
Olcott vs. Supervisors ————

City vs. Lampson, 9 Wall., 477.
Campbell vs. Kenosha, 5 Wall., 194.
Steines vs. Franklin county, 48 Mo., 167.
Columbia county vs. King, 13 Fla., 451.
Smith vs. Clark, 54 Mo., 78.
Town of South Ottawa vs. Perkins, Oct. T., 1876.
Supervisore Kendall county vs. Post, Oct. T., 1876.
Coloma vs. Eaves, 2 Otto., 484.
Coloma vs. Winnebago county, 16 Wall., 13.
The Township of Pine Grove vs. Talcott, 19 Wall.

The decision of the Illinois Supreme Court, of Campbell vs. Paris and Decatur Railroad Company et al., referred to by plaintiff-in error, was rendered at the September Term, 1874; whereas the bonds in controversy in this suit were issued in April, 1871.

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Furthermore, the case, when examined, will disclose that it was a proceeding for an injunction by a tax-payer of the township, asking to restrain the supervisor from issuing, and the railroad company from receiving the bonds, upon the ground that the subscription by Bourbon Township had been a conditional one, and the railroad company had not complied with the conditions, and there was danger the bonds would be issued notwithstanding.

The Court, in the opinion rendered, remarked that a copy of the charter had been filed, and they *incidentally*, or *obiter*, construe the fifth section as not embracing a municipal corporation.

It seems, from a Report of the Illinois State Audi-

tor for 1874 [a public document], page 54, that these very bonds of Bourbon township were allowed to be issued pending this suit, and then the case, we imagine, was left to take care of itself in the Supreme Court. Had this decision been called for in a litigation between a bona fide purchaser and the township which had issued them, we apprehend a different rule of construction of this charter would have been authorized.

Dillon on Municipal Corporations, Vol. 1, Sec. 416, says that the Supreme Court of the United States "has "refused to be concluded by decisions of the State "Court against the validity of such bonds, made after "the bonds were issued; it has adopted, *when necessary* "*to protect* the bona fide holders of such securities, *lib-* "*eral constructions of statutes and charters authorizing* "*the creation of such debts.*"

Pointedly to this effect is the case of Van Hostrup vs. Madison City, 1 Wall., p. 297, where the city charter gave it power to subscribe to railroads being constructed *to* the city, and it had subscribed aid to a railroad, the nearest terminus of which was some forty miles from the city, but which, at that point, connected with another road which did run to the city, and the question was, whether a proper construction of the charter gave the city power to subscribe aid to a road so remote. The United States Supreme Court in commenting, in its opinion, upon the construction of the charter, say: "*Even if the case had been doubtful, inasmuch as the* "*city authorities have given this construction to the* "*charter*, and bonds have been issued and in the hands "of bona fide purchasers for value, *we should have felt* "*bound to acquiesce in it.*"

Because this decision of the Illinois Supreme Court was rendered long after the issuance of the bonds in controversy in this case; and because the litigation there was between parties against whom a narrower construction of the charter was admissible; and because, as apparent upon the face of the decision, the construction of the charter was merely incidental, we feel at liberty to question the correctness of that construction of the charter, if it is sought to be applied as against bona fide holders.

We insist that the language employed by the legislature in the fifth section of the charter may fairly mean and include, what it says—"*any corporate body*"—for instance, a township.

Why should it not mean and include a township? Is there anything inherent in the language itself, or its connection in this charter to forbid its intending a township?

It might be assumed, that if the language had been—the agent of any body corporate *and politic* shall have the power to subscribe, etc.—then, it would have covered ground, and beyond all controversy, included a township, no matter how defective the charter might otherwise be in provisions for carrying out such power. But simply because *townships* are not *named*, or the technical words "*and politic*" are not added to "corporate body," it is intimated that a purchaser ought to have known that the charter did not intend a municipal corporation.

Let us see how much wiser and more technical than

the courts and legislature, this sort of argument would require a municipal bond-purchaser to be.

The same legislative assembly which enacted this charter also re-enacted the township organization law of the State of Illinois, of 1861, in which they referred to a township in this language: "Each town, *as a body* "*corporate*, has power," etc.

Gross' Statutes, 1871, p. 742.

Again, at the same session, in defining the powers of counties, they refer to a county as, "*a body corpo-* "*rate.*"

Ib., p. 756.

And when the Illinois legislature of 1851 adopted a township organization law, it used therein the word "*township*" as synonymous with "*corporate body.*"

So, when this same legislative assembly which designates counties and townships as "bodies corporate," enact this Paris & Decatur Railroad charter, and provide that the agent of "*any corporate body* may subscribe," why may they not be said to *intend* a township, according to their own definition?

The Supreme Court of Illinois, in its opinion in the case of The People vs. Dutcher, 56 Ill., p. 147, referring to the township of Amboy as having subscribed to the Chicago & Rock River Railroad Co., use this language: "When the legislature has authorized this township, *as* "*a corporate body* to subscribe," &c.

The learned judge of the United States Supreme Court, in the opinion in the case of the Township of

Pine Grove vs. Tolcott, in speaking of the township, calls it a "*corporate body.*"

It may be urged in opposition, that this untechnical use of language by the legislature and courts proves nothing in point as to what the proper construction of this clause of the charter ought to be.

But we insist, the whole question in this case hinges upon construction, as it did in the case of Van Hostrup vs. Madison City, *super;* and if the legislature which framed this charter, framed other laws at the same time, and at different times, in which they used the words "township" interchangably with "corporate body," and learned courts have done the same thing in cautious and matured written opinions, then, to say the least, whether this language employed in the charter meant to include a township or not, *is doubtful*, and being doubtful, will not this court feel bound, like in the case just referred to, to give it the same construction that plaintiff in error did when it subscribed and issued the bonds ?

How can it be urged that legislative assemblies using the *same language* in different laws, *intended* it in different senses ? Therefore we conclude that nothing inherent in the language employed forbids its meaning a township.

Plaintiff in error argues that because the *amount* which the agent may subscribe is not limited by this charter, therefore the agent of a private, and not a municipal, corporation was intended.

But it will hardly be contended that the legislature intended to clothe every existing agent, which any

private corporation happened to have for any purpose at the passage of this charter, with power to subscribe any amount which he wished to this road, whether his principal should be willing or not.

The legislature could hardly do this if it wished. It could come nearer clothing municipal agents with such power than those of private corporations, for the Supreme Court of Illinois have so construed the constitution of 1848 as to hold it within the power of the legislature to confer power upon boards of supervisors, and county courts, to subscribe without a vote of the people.

Town of Keithsburg vs. Frick, 34 Ill., 405.

But we apprehend that where the *amount* to be subscribed is *unlimited* by the charter, then it would require a special authority to the agent before one could subscribe for *either kind* of corporation; and therefore, so far as this argument about the *amount* is concerned, the charter may as well intend one kind of corporation as the other.

Neither can it be contended that municipal corporations were not intended because the right to subscribe was not confirmed to bodies corporate situate along the route of the proposed road. The act of November 6, 1849, certainly meant cities and counties, because it says so; and yet *it* allows *any* city or county in the State to subscribe $100,000 to *any* railroad company in the State.

In our view of the case, the provision was intended to allow *any* kind of a corporation, whose inhabitants or governing body could see a benefit to be derived from it, to appoint an agent and authorize him, or to special-

ly authorize an already appointed agent, to subscribe in its corporate name. Private, alike with municipal, corporations are equally dependant upon agents to act for them; and when the corporate body of either kind appointed its agent to subscribe, it could then limit the amount of the subscription.

Does it argue anything against our view of the construction of this charter, that it does not provide for an election, nor points out any specific mode by which a municipality, if one is intended, is to elect an agent or authorize one to subscribe?

The very existence of authorities favorable to us upon this point, shows that this charter law is not peculiar in this respect.

Dillon on Municipal Corporations, Vol. 1, Sec. 58, says: "Power to do an act *is often* conferred upon "municipal corporations *in general terms, without being* "*accompanied by any prescribed mode of exercising it.* "In such cases * * * the governing body necessar- "ily have, to a greater or less extent, a discretion as to "the manner in which the power shall be used."

It is said, in Abbott's Digest of the Law of Corporations, p. 569, "If no mode is prescribed *for the exercise* "*of a power*, * * * the corporation may adopt "such mode as in its judgment will secure the purpose "contemplated, and even, as a general rule, a grant "specifying the mode and manner of exercising powers "is construed as merely directory, unless there are "negative words excluding the right to adopt any other "mode."

To the like effect is the authority of The People vs. Dutcher, 56 Ill., p. 144, and the case of The People ex rel. vs The Gilman, Clinton and Springfield Railroad Company, 67 Ill., p. 65.

It cannot be alleged that a municipal corporation cannot delegate its power to an agent to subscribe, so that no inference can be indulged from this that the charter only contemplated *private corporations.*

In 1st vol. Dillon on M. C., latter clause of § 60, it is said, "that the principle that municipal powers or dis-"cretion cannot be delegated, does not prevent a corpo-"ration *from appointing agents and empowering them to* "*to make contracts.*"

Same vol., § 374, "The authorized body of a muni-"cipal corporation may, *by a vote*, clothe its officers, "agents or committees with power to act for it, * * * "and a contract made by persons thus appointed will "bind it."

We insist that the "authorized body" in contemplation of this charter was the electors of the townships, and as the power was conferred upon them in general terms, they could exercise it according to the law of their organization, by electing at a town meeting their supervisor as their agent to make a subscription under this charter *as the agent of a corporate body.*

There is no law requiring this general power conferred upon municipalities to do an act, to be conferred by any particular form of words, or any particular form of legislation.

If municipal corporations were intended to be in-

cluded in the language used in this charter, then it is of no importance that the power was conferred in general terms. Nor does the use of this general language in the charter argue that the legislature did not intend municipalities, because charters are frequently defective in some particulars, when, in some other of their provisions, the intention of the legislature is entirely clear.

This uncertainty as to the manner of exercising power otherwise clearly conferred, gave rise to the two decisions of the Illinois Supreme Court already cited in 56th and 67th Ill. In the first case, the township of Amboy had been authorized to subscribe to the Chicago & Rock River road, but the law conferring the power did not provide what sort of an election should be held to authorize the subscription, and the township consequently convened a town meeting, and voted to authorize their supervisor to subscribe and issue bonds. It was urged that this election was invalid because it was held in the manner regulating town meetings, and not under the general election laws of the State. But the Court say: "Amboy being a township organized under "the general township law, the presumption would be, "unless a contrary intention was expressed, that the "election should be held in the mode prescribed for its "government. Where legislation is adopted in refer- "erence to the action of an incorporated body, and no "mode is prescribed in which it shall be performed, the "presumption must be indulged that it is intended that "the body shall act through its officers, and in the course "usually adopted and authorized by the law governing "the body."

In the case in 67th Ill., where the same question is raised regarding the manner in which a township voted to subscribe, the Court say: "Had the act of the legis- "lature been silent as to the manner of holding and con- "ducting the election, then it might have been conducted "in the manner prescribed by the law of the organiza- "tion of the body in which it was held."

It is said in Abbott's Dig., before cited, "that cor- "porations, together with the express and substantive "powers conferred by their charters, *take, by implica- "tion*, all *the reasonable modes of executing such powers* "which a natural person may adopt in the exercise of "similar powers."

We have quoted from these authorities these familiar principles of law, as a reminder merely of how easy it would be, *upon legal precedents*, for a township, or other municipal corporation, to exercise the power conferred by the *general language* contained in this charter.

Nothing, therefore, we insist, cah be argued from the general language and scant provisions of this charter in favor of the construction that a municipal corporation *was not intended.*

The Court specially found in this case that defendant in error was a purchaser for value before due of these coupons.

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No fraud is shown in the issue of the bonds, and consequently he is an innocent holder.

Smith vs. Sac Co., 11 Wall., 139.

The record discloses that a large majority of those voting at the town meeting convened for the purpose, voted for the subscription.

Pages 11 and 12 of printed R.

It discloses that the supervisor, so appointed, subscribed and executed the bonds, which were placed *in escrow* until the road and a switch and depot were constructed *through* and *within* the township according to the conditions of the subscription as to time and place. It discloses that these conditions were fully complied with before the bonds were delivered.

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It discloses also, that these bonds were, in April, 1872, registered by the State Auditor in his office, and his certificate stamped thereon to that effect, and that one or two years' interest falling due upon the bonds has been paid by the tax-payers of the township.

Pages 14 and 15 of R.

In view of all these facts, occurring before the officials and tax-payers of the township *changed their minds* as to the correctness *of the first construction* they placed upon this charter, as authorizing them to subscribe, we ask, as betwen the *present* parties to this suit, if we have not a right, *upon legal precedents*, to insist upon as liberal a construction of this charter as the township itself placed upon it when it issued its bonds upon the market and induced their purchase upon its faith and credit?

Were it necessary, we think we might fairly argue also, that there was another source of power which authorized the township—plaintiff in error—to make this subscription, viz: power conferred by the re-enacted township organization law of 1861.

To make ourselves entirely understood upon this point, we will call attention to the fact that the constitution of Illinois of 1848, by Sec. 5 of Art. 9, conferred the power upon the legislature to vest with power the corporate authorities of counties, townships, school districts, cities, towns and villages, to *assess and collect taxes for corporate purposes.*

Under this power, by the law of November 6, 1849, the legislature conferred authority upon any city or *county* to subscribe $100,000 to *any* railroad company in the State. It did not mention townships, because they did not then exist, nor was there any law providing for their organization. Counties and cities *then* covered the whole territory.

Although the constitution of 1848 provided for the legislature enacting a township organization law, yet the legislature did not legislate concerning this subject until 1851, when it passed the first township organization law.

This law specifically defined the powers to be exercised by the electors of a township, and then provided that they should exercise none other.

The legislative assembly of 1861, in revising and re-enacting the township law, saw fit to enlarge the powers of township electors.

They conferred this enlarged power by the *general language* hereinafter indicated in the quotation, by italics.

By the act of February 20th, 1861, (to be found in Gross' Statutes of 1871, p. 745,) the electors are empowered, among other things, * * *—

3d. "To direct the institution and defense of suits "at law or in equity, in all controversies between such "towns, corporations, individuals or other towns."

4th. "*To direct such sum to be raised in such town* for "prosecuting or defending such suits, or for the support "and maintenance of roads and bridges, *or for any* "*other purpose*, as they may deem necessary."

5th. "To take measures and give directions for the "exercise of their corporate powers."

This general language employed in clause 4, and which confers power upon the electors of a township "*to direct such sum to be raised in such town*, * * *for* "*any other purpose*, as they may deem necessary," means, as we understand it, to raise a sum of money in the township for any *corporate purpose* besides those enumerated, and which the discretion and judgment of the electors may dictate.

This general power to raise money is only to be limited by the requirement that it must be for a *corporate purpose.*

This general power to raise money "for any other "purpose" *intended something.* What was it?

The purpose was not in any way defined nor limited

by express language. Then how is it to be construed? We think it certainly was intended to leave the amount and purpose in the discretion of the electors, only that they should be restricted to raising such sum for a *corporate purpose.*

If, then, subscribing stock to a railroad company, being or about to be constructed through or near a township, would be raising a sum for a corporate purpose, within the meaning of this clause of the township law of 1861, then we must insist that *that law also* conferred the power to subscribe in this case.

Ths Supreme Court of Illinois, in the well considered case of Johnson vs. County of Stark, 24 Ill., p. 87, considered the question as to whether a subscription by a county to the stock of a railroad company was a subscription for a corporate purpose, and they say "the "question is not one of first impression in the courts of "this country. It has been presented and judicially de-"termined in numerous cases, in all of which it is be-"lieved to have been held to be a corporate purpose, "authorizing the levy of a local tax for the payment of "the subscription."

They refer in their opinion to earlier decisions of the Court, holding the same doctrine, in 5th Gilman and 19th Ills.

In the subsequent case of the C., D. & V. R. R. Co. et al. vs. Smith, 62 Ill., p. 269, the same court have held that "taxes levied by township authorities to aid in the "construction of a railroad, is a corporate purpose."

We admit the rule is, that a municipal corporation

has no power to levy taxes which are not expressly authorized, either by its charter or by some general provisions of law; and yet we know of no law that requires the power to be conferred by any particular form of words; so that, because the language in the township law is different from the language used in most of the special charters of railroad companies wherein power is conferred upon municipalities to subscribe aid thereto, this is no proof that the legislature, in this enactment, did not intend to confer upon townships the power we contend for.

We quote from the case of Foster vs. Kenosha, 12 Wis., 616: "That although the power to levy taxes is "conferred upon a municipal corporation in general "terms, and without restriction as to the purposes for "which money may be raised, the corporation is limited "in the exercise of the power by the objects of its crea-"tion and can employ it only for municipal purposes."

It is further argued by plaintiff in error that even if there was original authority to subscribe, yet, as the power was not exercised in issuing the bonds until after the adotion of the constitution of 1870, it was then too late to exercise it, as there had been no election under any law providing for one.

We insist, upon the other hand, that there was an election authorizing the subscription prior to July 2d, 1870, held under a law providing for an election, and therefore that this case is expressly saved by the *provisos* of the separate article and section of the constitution quoted.

As we have before seen, power may be, and in this case is, conferred in general terms, and it will be asked, Where is the law providing for the election?

We answer, that the township organization law provides for holding an election, and the election in this case was held under that law. The law creating the corporations upon which this power to subscribe was conferred, had an election machinery of its own, and there was no especial necessity for additional power in this respect in the Paris and Decatur charter.

That holding an election under the township law would be a compliance with the provisos of the constitutional provisions quoted by plaintiff in error, we think is put beyond all controversy by the decision of the Illinois Supreme Court, of H. G. Mason *et al.* vs. City of Shawneetown, reported in Chicago Legal News, Nov. 13, 1875.

The city had issued bonds, *after July* 2, 1870, which it had subscribed to the St. Louis & S. E. R. R. Co.

The city had passed *an ordinance* providing for holding the election under which the vote was had authorizing the subscription, and it was urged against the ~~value~~ validity of the bonds, that this ordinance was not *such a law* as was contemplated by the provisos to the separate article, and of § 12, art IX of the constitution of 1870.

The Court held it was, and say: "It will be ob-"served that the provision of the constitution which "authorizes bonds to be issued in compliance with a "vote, does not require that the vote shall be had solely "under an act of the legislature of the State; the lan-

"guage used in the organic act is, 'in pursuance of any "'law.' An ordinance is the law of the inhabitants of "the municipality. * * While the charter nowhere "directly requires a vote of the people to authorize an "issue of bonds, yet where the manner in which the "power is to be exercised is left in the discretion of the "city council, with general power to act by and through "ordinances, we are aware of no better or more judicious "manner in which the city council could proceed to ex- "ercise the powers given them by the charter, than to "enact an ordinance submitting the question to a vote of "the people of the incorporation for their adoption or "rejection."

So in the case at bar. The charter conferring the power to subscribe did not necessarily require a vote of the people in the appointment of an agent; but that being the best and most judicious manner in which the township could proceed to exercise the powers given, then it was authorized by implication to proceed according to the law of its organization.

The township law contemplates the electors acting by a town meeting or election. That is the law of the township, just as much as an ordinance is the law of the city. And although the bonds in this case were issued after the adoption of the constitution of 1870, yet they were authorized by an election held before July 2d, 1870, under a law authorizing it. This complies with the constitution.

The further point is made that this was a *donation*, and therefore comes within the decision in the case of The Town of Concord vs. The Portsmouth Savings Bank.

The charter under which this subscription was made authorized a *subscription*. And as the bonds recite, a *subscription* was made *to the capital stock* of the Paris and Decatur road. If the township chose afterwards not to call for the stock, or by an independent transaction to donate it, this, in our judgment, would not change the character of the act from a subscription to a donation.

The question, too, whether *only subscriptions* are saved by the provisos of the constitutional provisions in question, is a question involving the construction of a provision of the State constitution, and the Illinois Supreme Court has twice passed upon the question. First, incidentally, in the case of C., D. & V. R. R. Co. et al. vs. Smith, 62 Ill., p. 277, decided at September Term, 1871, where the Court say: "Any distinction be-
" tween a donation and a subscription is more apparent
" than real; indeed, is entirely shadowy."

And again, it directly decided the point, after a re-argument, at the September Term, 1874, in the Chicago and Iowa Railroad Company and The Town of Mt. Morris et al. vs. Daniel J. Pinckney et al., holding that both donations and subscriptions were *intended* to be saved by the constitution.

Cullom Scholes & Mather
attys for Def'ts in Error

Additional Argument and Authorities,

BY

HAY, GREENE & LITTLER,

OF COUNSEL FOR DEFENDANT IN ERROR.

It is insisted by counsel for plaintiff in error, that this Court is bound by the decision of the Illinois Supreme Court (that Court having directly passed on the validity of the bonds and coupons involved in this suit, holding that there was no power in the town to subscribe and issue the same), and in support of this proposition the case of Leffingwell vs. Warren, 2 Black, 603, is cited and relied on. We deny that the doctrine announced in that case has any thing to do with the case at bar. It will be found on an examination of that case, that the suit was an action of ejectment for the recovery of certain lands, and the Statute of *Limitations* of the State of Wisconsin was pleaded, that this statute had been construed by the Supreme Court of said State, and this court say that it will be bound by the construction given said statute by the Supreme Court of that State. It may

be stated, as a general rule, that the decisions of the highest courts of the State, construing State statutes will be observed, and their construction adopted by this court. But this general rule has at least one exception, viz.: where the subject of the controversy is *commercial securities.*

In Pine Grove vs. Talcott, 19 Wallace, 666, this court say: "Questions relating to bonds issued in a ne-"gotiable form, under an act of the State legislature in-"volving questions relating to commercial securities, and "whether under the constitution of the State such secu-"rities are valid or void, belongs to the domain of gen-"eral jurisprudence. This court will accordingly not "follow the decisions of the courts of the State where "the bonds are issued, as to their validity and consti-"tutionality under the laws and constitution of the State, "if the judges here disapprove of those decisions."

In this case this court overruled two decisions of the Supreme Court of the State of Michigan, holding the bonds void.

Again this Court, in Supervisor vs. Schenck, 5 Wallace, 784, say: "Attention is drawn to the fact that "in a recent case not yet reported, the Supreme Court of "the State have held that these bonds are void even in "the hands of an innocent holder; but inasmuch as the "power was fully conferred by law, the question of their "validity in the hands of innocent holders, without "notice, is a question of *commercial law* where the State "adjudications, *although entitled to great respect, do not "furnish the rule of decisions in this court.*"

In this case the decision of the Illinois Supreme Court, holding the bonds void, was overruled, and this Court, in express terms, refused to be bound thereby in cases involving commercial paper. At the present term of this Court, in the case of Town of South Ottawa vs. Perkins, this Court again overruled two decisions of the Supreme Court of Illinois where the validity of municipal securities was involved.

As early as the case of Swift vs. Tyson, 16 Peters, page 1, this Court announced that in questions as to the validity of commercial securities, it would not be bound by the courts of the States. And this rule has been uniformily adhered to up to the present time—except in the case of Town of Elmwood vs. Marcy, 2 Otto., 294. In this case three of the learned Judges of this Court dissent from the doctrine announced, that the Court would hold itself bound by the decisions of the State Court. It is nowhere intimated in this case that the Court would consider itself bound by the decisions of the State Courts rendered *after* the bonds were issued and in the hands of innocent holders. If it shall be claimed that this opinion holds, that this Court is bound by the State Court's rulings on these questions, then we submit that it is in conflict with the uniform rulings of this Court, and should be modified.

But will it be contended that one decision of the Illinois Supreme Court, wherein the parties were some of the tax-payers of the town on one side, and the railroad company and the supervisor of the town on the other, the suit being a bill in chancery to enjoin the company from receiving and the supervisor from issuing

bonds which had been voted under the act of the legislature now in question, furnishes "an *unbroken series of* "*decisions*" which will bind this Court?

The main question in this case, upon which the injunction issued, was the alleged non-performance of the conditions upon which the bonds were voted. A demurrer was filed to the bill, which was sustained; and the only question properly before the Supreme Court was the ruling of the Circuit Court in sustaining the demurrer. The Supreme Court properly held that the facts justified the granting of the injunction, because it was clearly averred that the company had wholly failed to comply with the terms and conditions upon which the bonds were voted. We therefore insist that so much of said opinion as holds that there was no power under the charter of the company authorizing municipal corporations to vote, subscribe and issue bonds in aid of the road, is "*mere dictum.*" It does not apper that this question was made by the pleadings. Whether this case was argued by brief or otherwise, does not appear. We are justified, however, in stating that the case was compromised pending the suit, and the bonds issued and the litigation *abandoned* prior to the final submission of the case. The fact that this bill was filed and the bonds issued as before stated, gave the commercial world additional confidence in these securities. Persons desiring to sell the bonds could point with satisfaction to the fact that they had been issued on a basis of compromise after the rights of the parties had been litigated in the circuit courts of Illinois, and that court holding, in substance, that the town authorities were bound

to issue them to the company. Under these circumstances, and before the Supreme Court of Illinois had pronounced its *dictum*, the bonds were issued and sold to innocent third parties. Therefore we insist that the Court is not bound by the *dictum* of the Illinois Supreme Court. It seems hardly necessary to quote authority to show that the dictum of a court is not even binding on itself, much less another independent tribunal, which counsel seeks to bind.

It is further insisted that the bonds and coupons involved in this suit are void, because they were issued as a *donation*, and this court having held in Town of Concord vs. Portsmouth Savings Bank, 2d Otto, p. 625, that bonds voted as a donation and issued after the adoption of the constitution of 1870 of Illinois, is relied on to sustain this position.

At to this case, we have first to state that it is in conflict with the decisions of the Supreme Court of Illinois, that court having expressly held that donations as well as subscriptions are within the the proviso of the separate article of the constitution relied on by counsel, and we cite this case to sustain our views already advanced, that this court does not consider itself bound by the State court decisions.

Assuming, however, that the court still adheres to the views expressed in the case last mentioned, we insist that the question as to whether the bonds in suit here were issued as a *donation* cannot arise in this case, because the bonds on their face recite that they were issued in payment of stock subscribed. The bonds recite: "This

"bond is issued in pursuance of an election held in said "township of East Oakland on the 1st day of February, "1870, at which election the supervisor of said township "of East Oakland was duly elected agent of said town- "ship of East Oakland, to *subscribe* the sum of seventy- "five thousand dollars to the capital stock of the Paris "& Decatur Railroad Company, *and to issue the bonds of* "*said township in payment of said stock*," &c.

Record, p. 14.

Will this court allow the town to go behind the recitals of the bonds, and show that they were issued as a donation, when by its proper officer and agent, it solemnly certified that they were issued in payment of stock subscribed, and in pursuance of the act incorporating the said railroad company? We say, no, unless the court shall recede from its uniform rulings in relation to recitals being conclusive against the municipalities issuing the bonds.

The purchaser is bound to know whether, under any circumstances, the town had authority to issue the bonds, this power was fully conferred by the 5th section of the charter of the road, and by reference to that act he was informed that the "agent" had the power to "*subscribe*."

The act authorizing a subscription, and the bonds reciting that it was issued in payment of a "subscription," the purchaser was not bound to look further.

This Court has so often held that a municipal corporation cannot go *behind* the recitals of its bonds when they are in the hands of innocent third parties,

that we deem the citation of authorities almost unnecessary.

The most elaborate discussion of this doctrine since the famous case of Knox county vs. Aspinwall, 21 Howard, 544, will be found in the case of The Town of Colomo vs. Eaves, 2 Otto, 484. This case reviews the former adjudications of the Court, quotes approvingly Knox vs. Aspinwall, and cites divers cases of the Court wherein the doctrine of *estoppel by recitals* in the bond have been announced, and reaffirms, substantially, all former adjudications on this question. The Court, in discussing the question of *estoppel by recitals* in that case, say: "This we understand to be the settled doctrine "of this Court."

It would seem that if any proposition of law is capable of being settled by the oft-repeated adjudications of a court of last resort, extending over a period of more than twenty years, a portion of which ~~discussions~~ decisions were participated in by some of the most celebrated jurists (living as well as dead) that the country ever produced, then this doctrine of *estoppel by the recitals* of a municipal bond is no longer an open question in this Court.

This doctrine is based upon justice and right, and ought not to be disturbed, for it has become a fixed rule of property in this country, as well as in the entire commercial world; uncounted millions of dollars have been invested in this class of securities on the faith of the adjudications of this Court, and for the Court now to recede would work the ruin of countless innocent

parties, and be offering a premium to repudiation and high-handed injustice.

The law under which the bonds in suit were issued, imposed the duty upon the agents of the town of deciding whether the provisions of the same had been complied with. The agent in this case certified that its provisions were fully complied with; and this decision having been made, operates as a final adjudication, and forever estops the town from raising any question as to the irregularity of the issue and from denying the recitals of the bonds. There is, however, another element of estoppel in this case;—we refer to the certificate of registration by the State Auditor. (See record, page 14.) The Auditor certifies that these bonds were duly registered in pursuance of the provisions of a certain law of Illinois, in force April 16th, 1869. This law is a part of the general statutes of our State, and will be found in Illinois Revised Statutes of 1874, p. 794. Among other things, this act provides—

SECTION 17. "And the presiding judge of the "county court, or the *supervisor* of the township, or the "chief executive officer of the city or town that shall "have issued the bonds to any railway or railways im- "mediately upon the completion of the same near to, "into, or through such county, township, city or town, "as may have been agreed upon, and the running of "the cars thereon, shall certify under oath that all the "preliminary conditions in this act required to be done "to authorize the registration of such bonds, and to en- "title them to the benefits of this act have been complied "with," &c., "and under what law issued," &c.; and

thereupon it should be the duty of the Auditor to register, &c.

Now, in order to procure the registry of the bonds in suit, the supervisor of the town was compelled to certify *under oath* that they had been issued in pursuance of the provisions of the Paris and Decatur Railroad charter. If it had appeared, either from the recitals in the bond or from the certificate under oath of the supervisor that the bonds were issued as a *donation*, and not in payment of a subscription, this fact would have prevented their registration, for the Auditor would have at once discovered that there was no authority in the act under which they were issued for the town to *donate* any thing to the Paris and Decatur Railroad Company.

The provisions of the law under which they were issued, before mentioned, furnish an explanation of the *recital* that they were issued in payment of a subscription. If, then, the act under which they were issued only authorized their issue in payment of a subscription, and the supervisor of the town certified under oath that they had been issued in pursuance of the terms thereof, and these facts again certified on the back of each bond under the hand and seal of the Auditor of State, in order to increase their negotiability, will not protect an innocent holder for value, it is due to persons dealing in this class of securities that the law should be so declared *speedily*. The defense, that the bonds were issued as a donation, involves the *perjury* of the agent of the town, or the gross violation of official duty on the part of the State Auditor. The purchaser had a right to assume that the supervisor of this town swore to the

truth, or at least that he did not commit *wilful perjury* in order to procure the registry of the bonds; and the town, on the authority of "Colomo vs. Eves," *supra*, is estopped from questioning the facts so certified.

Attention is drawn to the fact that this municipality obtained for the bonds precisely what it contracted for, viz.: a railroad through its territory. Every condition upon which the bonds were voted, so far as the construction of the road was concerned, was fully and in the utmost good faith complied with. This was. after all, the inducement and the substantial consideration upon which the bonds were voted and issued, and upon principles of honesty and fair dealing, it ought not to be allowed to reap the benefits arising from the construction of the road, and at the same time defraud holders of its bonds, whose money was expended in its construction.

The record shows that the stock of the company has never in fact been issued and delivered to the town; but the bonds having issued in payment thereof, the town is in condition to compel its issue and delivery, for the reason that any attempt to donate it was not authorized by the act of incorporation.

In view of these facts, we insist that the town is now estopped from urging that the bonds were a donation, as against the defendant.

The Auditor's report of 1874, already referred to, shows that between three and four hundred thousand dollars of these negotiable securities have been issued to this Paris and Decatur Railroad Company by townships along its line in aid of its construction, and we

do not believe a court will, or ought to be, very favorably inclined to indulge these townships in their *amended construction* of the powers conferred by this charter, to the very serious and heavy loss which it would entail upon the innocent holders of this large amount of commercial paper.

Respectfully submitted.

HAY, GREENE & LITTLER.

No...... *Agenda No.*.....

SUPREME COURT

OF THE UNITED STATES.

THE TOWNSHIP OF EAST OAKLAND,

Plaintiff in Error,

vs.

WILLIAM B. SKINNER,

Defendant in Error.

Brief for Defendant.

Filed ..... 1876.

.....

Clerk.

CULLOM, SCHOLES & MATHER,

AND

HAY, GREENE & LITTLER,

Att'ys for Defendant.

IN THE

Supreme Court of the United States.

THE TOWNSHIP OF EAST OAKLAND,

Plaintiff in Error,

vs.

WILLIAM B. SKINNER,

Defendant in Error.

Brief of George A. Sanders,

FOR DEFENDANT IN ERROR.

Rokker's Printing House, Springfield, Ill.
1876.

IN THE

SUPREME COURT OF THE UNITED STATES.

THE TOWNSHIP OF EAST OAKLAND,
Coles county, Illinois,
Plaintiff in Error,

vs.

WILLIAM B. SKINNER,
Defendant in Error.

Error to the Southern District of Illinois

BRIEF OF GEORGE A. SANDERS,

OF COUNSEL FOR DEFENDANT IN ERROR.

This is a suit for the payment of $7,900, face value of coupons cut from bonds issued by the township of East Oakland, Coles county, Illinois, in payment of a subscription of $75,000 to the capital stock of the Paris and Decatur Railroad Company.

The case was tried by the Court without a jury, and judgment rendered for defendant in error.

The bonds were issued March 1st, 1871, running ten years, at ten per cent. interest, annually, signed by the

Supervisor as *Supervisor and Agent*, and registered by the State Auditor, and his certificate and seal of office are indorsed on the bonds, attesting that fact. Two years interest—that of 1873 and 1874—was paid on these bonds, and this suit is for interest since accruing.

Two questions arise in this case: The one as *to the powers possessed*, and the other *as to the execution of the powers*.

First—Did the Township of East Oakland ever have *the power* or authority to subscribe for the stock and to issue the bonds in question? and

Second—Was that power or authority legally executed by the Township of East Oakland?

The Legislature, by act in force February 18, 1861, in incorporating the Paris and Decatur Railroad Company, among other things, enacted that "*it shall be lawful for* "*all persons of lawful age, or for the agent of any* "*corporate body, to subscribe any amount to the capital* "*stock of said company.*" (Private Laws, 1861, p. 511, Sec. 5.)

And also provides, "that they may build, maintain "and use a railroad from Paris, in Edgar county, to De-"catur, in Macon county, upon some direct line; *pro-"vided, said railroad be so located as* TO PASS THROUGH "THE TOWN OF OAKLAND, COLES COUNTY." (Sec. 1st of Charter.)

The language of this Charter is very broad and comprehensive. "The agent of *any corporate body* may "subscribe *any amount* to the capital stock of said "company."

It is objected that *only private corporations* are intended; that this language must be interpreted some-

what in the light of our constitution of 1870; that a limited construction must be put upon the powers here conferred, and that a new signification to these plain and simple words must be found to bring the construction of this statute more into sympathy with the spirit at least of the decisive and prohibitory statements of the constitution of 1870, on the subject of the scope and exercise of corporate powers in aid of railroads, and that, too, after rights and equities of innocent and third parties have accrued under the construction given to this language in its ordinary and generally accepted usage.

In construing the language of any statute conferring power or authority, the power or authority is not to be defeated by a too rigid and stringent construction (7 Ind., 86 and 104,) but the intention of the Legislature is to be sought by surrounding circumstances, and anything that will tend to indicate their intent and purpose.

At that time but comparatively few public corporations, towns, cities and counties had subscribed in our State to the capital stock of railroads, and public sentiment was then growing in favor of this kind of railroad aid, which in the ten years following actually voted a debt upon the cities, counties, towns and townships of Illinois, whose interest is paid by the State Treasurer, and which is registered upon the books of the Auditor, to Nov. 30, 1874, of $1,824,824.71. (Auditor's Report, 1874, p. 67.)

Then it was considered an easy way to get a railroad, which it was supposed would soon pay for itself in the enhanced values of property, real and personal.

And the language seems well chosen to express the sentiment of the Legislators and their desire to confer

the power upon *all corporations*, both public and private, and even upon individuals—no particular class, but *all* classes, both public and private corporations. The incorporators wanted the money, and did not care from what source it came, and framed their charter with the most comprehensive language. Not any particular *class*, but *any corporation* of *whatever class*, or even individuals of lawful age could subscribe to the stock of this railroad company.

This language must be construed in the light of laws and decisions up to that time existing, and not of subsequent enactments; and by any reasonable construction it is inclusive of all corporations that may wish to subscribe, and confers full power to both public and private corporate bodies, through their agent, to subscribe to its stock.

And when the Legislators, in this Act, speak of how notice shall be given, of *when and where* the books are to be opened, they say—"at least thirty days' notice "shall be given, by publication in a newspaper pub- "lished *in the town or city where* said books may be "open, and *if there is no newspaper published therin*, "*then in the nearest newspaper thereto*."

This language contemplates subscriptions *in the country, where there are no newspapers*, and where there usually are no *private corporations* to make any subscriptions to stocks, and where only public corporations, such as towns, townships and counties, can exist to make subscriptions of this kind. Private corporations, such as subscribe to this kind of stock, do not exist in the country, but only in cities and large towns where newspapers are always found. The corporations the

Legislators had in mind *must have been such as may exist where no newspapers are published, and could only have been such public corporations as towns, townships and counties*, as far as the notice is concerned.

The Plaintiff in Error relies upon the decision in the case of Campbell et al. vs. The Paris and Decatur Railroad Company, in the Illinois Supreme Court, January term, 1874, not yet reported, wherein it is claimed the Court decides that only *private corporations* are included in the terms, "*Agent of any corporate body*," to subscribe, etc. This is a case that was never properly adjudicated by our State Supreme Court. It was entirely *ex parte*. It was made up and papers filed without any defence whatever. The rights of the bondholders were not presented to the Court, nor were they represented by counsel. The case went by default, because *at that time the town of East Oakland was paying its interest* on the bonds issued under this very charter, which they now seek to render invalid under this decision. They were ratifying this very contract, and discharging the obligations assumed under this charter in good faith, and would probably never have repudiated their obligations had it not been for this decision. The doctrine cited by the Plaintiff in Error, in the Elmwood vs. Marcy case, October Term, 1875, of this Court, is not strictly applicable to this case. The decision in that case quoted, to-wit: "We have always followed "the highest Court of the State in its construction of its "own constitution and laws. It is only where they "have been construed differently at different times, that "in cases like this we have adopted, as a rule of action, "the first decision, and rejected the last. This has

"been done on the ground that rights acquired on the "strength of former decisions, ought not to be lost by a "change of opinion of the Court."

We submit that this was not such a decision, *being entirely ex parte*, as would defeat *the rights acquired in good faith* long before this decision, *by all parties, and especially innocent holders of bonds, not represented* when it was made. And the rights of innocent parties, acquired in good faith under the charter, ought, at least in equity, to be protected as well as those acquired under a first decision of the State Court. And further, it would seem that this rule is not strictly adhered to, as in the case of the Town of Concord vs. Portsmouth Savings Bank, decided at October term, 1875, by this Court, making a distinction between *subscriptions and donations* when there were *two cases of the State Supreme Court both in the same line, that there was no distinction between subscriptions and donations*, to-wit: 62 Ill., p. 277, The Chicago, Danville and Vincennes Railroad Company vs. Smith; and the Chicago and Iowa Railroad Company and the Town of Mt. Morris vs. Daniel Pinckney et al., filed 30th January, 1875, and not yet reported, and both given BEFORE the decision of the Town of Elmwood vs. Marcy case was rendered by this Court.

The language of Sec. 1st of the Charter, *in the proviso*, granted power to build, maintain and use a railroad: *provided it pass through the town of Oakland, Coles county.*

It is clear this proviso of the charter was placed in it at the instigation of the people of the township, or some of their most influential citizens, and not only indicates their desire for the road, but their intention to support

it. The fact that it was put into their charter is strong evidence that the incorporators relied upon it for material aid in subscriptions to their stock; otherwise the proviso would not have been inserted.

What other consideration was probable, and what other inducement could the people of this township hold out to the incorporators that would induce them to insert such a proviso?

Moreover, it has been the constant practice of the railroad corporations, for over a quarter of a century, in the west, to build their roads with the local aid donated or subscribed to their capital by the country through which they ran their lines of road, by the agency of towns, cities, townships and counties, and vastly more by such public corporate aid than by any private subscriptions. The reason is evident: most of the public subscriptions were considered in the nature of a donation, or were soon made to appear worthless, to compel the surrender of the stock, while the private capital insisted on personal supervision of its interests and a share of the dividends. It was therefore for the interest of these incorporators to get all they could of the townships, cities and counties through which they passed; and to cover all questions they made the language as broad as possible in the charter, and it became the enactment of the Legislature in due form of law.

It is therefore a fair and reasonable inference that this was their intention, unless there is something prohibiting the municipal corporations from the exercise of this power, is so clearly given, and that too, not by implication, but by the explicit language of the charter: "*The agent "of any corporate body may subscribe any amount of the "capital stock of this railroad company.*"

There was no prohibitory law at that time: but on the contrary, all the enactments having general powers favored the use of corporate powers in any interest or measure which had for its end the development or care of the best interests of the people.

Corporations have no powers save such as are conferred upon them; they are the creatures entirely of legislative enactments. This court has held that "legisla-"tures have the right to authorize municipal corporations —and of such are towns and townships—to take stock in "railroads or other works of public improvements: to "borrow money to pay for such stocks, and to levy taxes "to repay loans unless restrained by the organic law: "and this power may be conferred so as to be used "either with or without a vote of the people." (3 Wallace, 327.)

The court, in this case, go so far as to say that a vote is not necessary, provided the legislature grant the powers, and there is no restraining organic act.

And again, the same court say "that a railroad is a "*public highway*. Being so, and thus a road for public "use, a state may impose a tax in futherance of that "use, even though the road itself be built and owned by "a private corporation." (16 Wallace, 678.)

The township organic law, in force at the time these bonds were issued by the town of East Oakland, to pay for the $75,000 stock subscribed by them to the Paris and Decatur Railroad Co., is found in the Revised Statutes of 1874, p. 1071, Sec. 2, and in enumerating the powers of the people assembled in town meetings, it says, among other things—"They are *to take all necessary* "*measures and give directions for the exercise of their* "*corporate powers.*"

Sec. 4. They are "to direct the raising of such sums "for the prosecution or defending of such suits; for the "support and maintenance of roads and bridges; OR FOR "ANY OTHER PURPOSE THEY MAY DEEM NECESSARY."

Necessary for what? For the public use; for the public profit; for the public convenience, and for the public pleasure. In short, the whole power here is redelegated to the people by the Legislature, and they are made the sole and only judges of *what shall be deemed necessary* objects of pecuniary support for the public good. And this legislative enactment, instead of limiting or restraining, gives the greatest latitude, and is bounded only by the opinion the people have of their own necessities, and their desires to supply them.

If they, or a majority of them, in town meetings assembled, *deem it necessary*, they may vote a tax to buy an elephant, or build a jail; to make a railroad or a meeting-house; to dig a canal, or build a hotel. There is certainly no limit to this power *if they deem it necessary for the public good*, or for their convenience and pleasure.

The statute law not only supports the free use of the general powers of the people, but it derives its wisdom from the constitution of the state, and is a faithful interpreter of its spirit. It is the child of that parent and is obedient to its father.

The constitution of 1848, Sec. 5, p. 53, Art. 9, Revised Statutes of 1874, *then in force*, distinctly states, in enumerating the powers of the people, that "*the corporate "authorities of counties, townships, school districts, cities, "towns and villages may be vested with power to assess "and collect taxes for corporate purposes, such taxes to be "uniform in respect to persons and property, within the "jurisdiction of the body imposing the same.*"

Our supreme court has settled the question as to who are "*corporate authorities*," as mentioned in this section, and declare that they are "those municipal officers who "are either directly elected by the population to be "taxed, or appointed in some mode to which they have "given their assent." (62 Ills., 268.)

In the case at bar, the supervisor, in his double capacity of *supervisor and agent*, is clearly within this decision, and had the authority vested in him by direct vote of the people for the special purpose of making this subscription. At the same time they voted to have the subscription raised they also voted who should make it. and, to comply with the exact language of the charter, he signs himself *supervisor and agent*.

And again, the same court says, that "town officers, "under the township system, making an appropriation "to a railroad company in pursuance of law, upon a "vote of a majority of the legal voters of the town au- "thorizing the same, are '*corporate authorities*' of a "municipal corporation, who are authorized to levy "taxes under the constitution of 1848." (62 Ill., 268.)

"That there is no distinction between a donation in "aid of a road and a subscription to the capital stock "of the corporation." (Ib. 277.)

The Legislature gives the people, in town meetings assembled, the power "*to take measures and give direc-* "*tions for the exercise of corporate powers.*" (Pub. Laws, 1861, p. 221.)

Our State Supreme Court has decided that "a tax or "appropriation for a corporate purpose is one for the "benefit of the inhabitants of the municipality. Taxes

"levied by township authorities to aid in the construc-
"tion of a railroad is a *corporate purpose*." (62 Ill. 269.)

And says further "that railroad corporations are "created for the public good, and that said roads have "almost superceded all other means of inter-communi-"cation between the several parts of our extensive and "growing State. They have become an absolute neces-"sity. They have added millions to our taxable prop-"erty. Railroads are, in truth, the *people's highways*, "for pleasure, business and commerce; without them "our internal trade would languish and die, and our "corn and wheat rot in our granaries."

"For a quarter of a century the courts have recog-"nized and referred to them as public improvements "made for the public good, and to subserve the public "interest. They are improved public highways, and the "courts have uniformly held that they are of such pub-"lic use as to justify the right of eminent domain in "taking all real estate that may be necessary for the "construction and maintenance of the roads and their "property. * * * Disfiguring and rendering unfit "for cultivation farms, and even in destroying dwell-"ings."

The same court, quoting the section of the constitution of 1848 above cited, says, "if the appropriation "was for a public purpose, for the benefit of the inhabi-"tants of the municipality; *then it would be for a public "purpose*." (62 Ills., 276.)

The constitution of Tennessee provides "that the gen-"eral assembly shall have power to authorize the sev-"eral counties and incorporated towns in this state to "impose taxes for county and *corporate purposes* re-"spectively."

It is substantially the same as our constitution. The city of Nashville, Tenn., subscribed, and a bill to restrain the issue of the bonds was filed.

The court held that the legislature had the power to authorize a subscription; that the construction of the road *was a "corporate purpose,"* and that the city might either levy the tax or issue bonds to obtain the money. (Cited, 62 Ills. 276.)

Again, our Supreme Court defines a "*corporate purpose* to be a tax to be expended in a manner which "shall promote the general prosperity and welfare of "the municipality which levies it." (42 Ills., 9.)

Under these decisions and construction of our constitution of 1848, above quoted, and the act of the legislature in force at the time when the vote was taken, giving the people, in town meetings assembled, power "*to take "all necessary measures and give directions for the ex- "ercise of their corporate powers,*" the authority seems ample, and the power to subscribe for the capital stock sufficiently given and defined by the legislature under the constitutional provision.

What can this section mean if it be not for *any act* of the people, not forbidden by law, that they shall deem for their pleasure and profit and for the benefit of the public?

In the language of our Supreme Court above cited, (42 Ills. 9), would not the voting for a subscription to this railroad and the issuing of bonds to pay for the same be "a tax to be expended in a manner which shall "promote the general prosperity and welfare of the "municipality which levies it?" And would not that be an exercising of *corporate powers for a corporate purpose?*

The power to borrow money and incur indebtedness would be conceded to the township authorities, if they deemed it necessary for public purposes, as a proper exercise of their corporate powers for a corporate purpose. The United States Supreme Court declares, that "power to borrow money for *any public purpose* gives "authority to a municipal corporation to borrow money "to aid a railroad company making its road as a way "for public travel and transportation; and as a means "of borrowing money to accomplish this object, such "municipal corporation may issue its bonds to be sold "by the railroad company to raise the money." (3 Wallace, 654.)

We have, then, as authority for the subscription of this $75,000 of capital stock to the Paris & Decatur Railroad Co., the charter of the company, an act of the legislature granting full power to "*the agent of any corpo-*"*rate body to subscribe any amount to the capital stock* "*of said company.*" It cannot be denied that a township is a corporate body, and that it may act through its supervisor, duly elected to that office, and especially when, as in this case, he was elected as supervisor and agent to make the subscription—so anxious were the people to fully comply with the terms of the charter—at the same meeting that authorized the subscription of the stock.

Besides this direct authority from the Legislature to this township, particularly recognized by name in the proviso, through whose territory the road must pass to comply with the conditions of the charter, we have the powers given the people in town meetings assembled, by the Legislature, more general, but none the less author-

ity, "to raise money (among other things enumerated) "*for any other purpose they may deem necessary, and to* "*take all necessary measures and give directions for the* "*exercise of their corporate powers.*"

And back of all these legislative powers conferred is the enabling and supporting authority of the constitution of 1848, granting "corporate authorities of coun- "ties, townships, school districts, cities, towns and vil- "lages (even), powers to assess and collect taxes for "*corporate purposes.*"

This same constitution, in Sec. 6, declares that "the "specifications of the *objects and subjects* of taxation "shall not deprive the General Assembly of the power "to require other objects and subjects to be taxed in "such manner as may be consistent with the principles "of taxation fixed in the constitution."

In this section the intention is not to limit the objects and subjects of taxation, but rather to enlarge them, if the Legislature should deem it desirable at any time so to do, only insisting that *the principle of taxation*—that of equality—be strictly adhered to. And the legislature in the act of 1861, above cited, seem to have given to the people full authority to decide for themselves, in town meetings, what objects and subjects for taxation they will support.

The power or authority to issue their bonds would therefore seem most ample from the constitution and legislative enactments, as they have been construed by our State and Federal Courts. But it is objected that the new constitution limits these powers conferred by the constitution of 1848, and the legislative enactments thereafter.

It is true that the new constitution went into effect in August, 1870, and that these bonds were not issued until the following March, 1871, while the election was held, at which the township voted to subscribe for the stock, on the first day of February, A. D. 1870.

The new constitution (Revised Statutes of 1874, p. 82), in force in August, 1870, declares "no county, city, "town, township or other municipality shall ever be- "come subscriber to the capital stock of any railroad or "private corporation, or make donation to, or loan its "credit in aid of such corporation; *provided, however, "that the adoption of this article shall not be construed "as affecting the right of any such municipality to make "such subscriptions, where the same have been authorized "under existing laws, by a vote of the people of such "municipalities prior to such adoption."*

But this section of the new constitution has no bearing whatever on the case at bar. The bonds, upon their face, declare that the election was held February 1st, 1870. The constitution of 1870 was adopted in convention May 13th, 1870, ratified by the people July 2d, 1870, and went into force August 8th, 1870. (59 p. Revised Statutes, 1874.) This clearly shows that nearly three and a half months elapsed after the vote was taken before the constitution was adopted, and brings the case at bar within the proviso that the rights of municipalities shall not be affected where, under the existing laws, a vote of the people had been had before the adoption of the constitution.

The plaintiff in error claims a *a distinction* between *subscriptions for stock* and *donations*, under this prohibition article of the constitution. We submit that no such distinction was ever contemplated by the Conven-

tion of 1869, which framed the article adopted July 2, 1870, as the history of the debates clearly shows. At that time *subscriptions for stock*, under general laws of 1849, cited in Johnson vs. County of Stark, 24 Ills., 83, *donations*, under statutes having local operation, and *loaning credit*, authorized by special charters, as in Kenosha & Rockford Railroad Co., cited in Robertson vs. The City of Rockford, 21 Ills., p. 452, were practiced in Illinois. To such an extent had these methods of obtaining credit been used, that the constitutional prohibition was adopted in 1870 to cover all these modes of authorizing, by the legislature, the granting of municipal aid to railroad corporations. The Debates in the Convention of 1869, in vol. 2, p. 1103, pp. 1234 to 1242, and p. 1730, clearly show the history of this article.

March 10, 1870, the article was introduced into the Convention, and was amended and subsequently adopted, as follows:

"No county, city, town, township, or other municipality, shall ever become subscriber to the capital "stock of any railroad or private corporation, or make "donations to, or loan its credit in aid of such corporations."

April 13, 1870 (p. 1240), Hon. Milton Hay, of the firm of Hay, Greene & Littler, of Springfield, offered the following amendment thereto, the *proviso* which makes a part of the article, and which was adopted, as follows.

"*Provided*, however, that the adoption of this article "shall not be construed as affecting the right of any "municipality to make such subscriptions when the

"same have been authorized under existing laws, by a "vote of the people of such municipalities prior to such "adoption."

Upon offering the amendment, Mr. Hay said: "I offer "this amendment for the reason that I apprehend much "embarrassment might arise as to the application of the "proposed provision of the constitution (if it should "be adopted), growing out of *existing contracts* and ex- "isting relations, that have been entered into prior to the "adoption of this article. Now, the practice, so far as "I am aware, has been to obtain the votes of counties "or cities to aid railroads, and when that has been "given, the subscriptions are made, and the bonds of "the corporation issued when the railroad is completed "through the county or city. In some places these sub- "scriptions are never made until the railroad is actually "completed to or through the corporation.

"Now, many of these railroad corporations have en- "tered into contracts upon the faith of obtaining this "subscription as soon as a road shall be completed, "and the amendment I propose is to give to corpora- "tions the right to fulfill these obligations, and thus "save embarrassments that might arise out of the adop- "tion of the article unless that proviso were inserted."

The proviso was adopted without other or further discussion.

From Mr. Hay's remarks and the proviso itself, the intention of the Convention will be seen—that the amendment was to the *whole article*, and was as broad and comprehensive as the article of which it was in-

tended to become a part. To relieve from embarrassment railroad corporations who had entered into obligations in good faith, relying upon *aid* voted them by municipalities, was its object. And that the embarrassment to be relieved would be eqnally great, whether the aid voted and relied upon was a subscription for stock, a donation, or a loaning of credit.

The proviso does not except any one or two of the methods of obtaining aid then in practice, to the exclusion of the other, but treats them all exactly alike. The objects sought by all these methods of aiding railroads were the same. There is no reason for supposing that the Convention would favor one to the exclusion of the others, and inasmuch as all methods were in practice, there would certainly have been objections and a debate, had not the Convention been of the unanimous opinion that *all methods* of loaning aid to railroads were being treated alike.

It is evident that there was no such distinction in the mind of the mover of the amendment. Nor is there any ground, in fact, for any distinction between *a subscription and a donation*, upon the ground that *there is a consideration* for a subscription and none for a donation.

Our State Supreme Court has passed upon this question, in Chicago, Danville & Vincennes Railroad Co. vs. Smith, 62 Ills., p. 277, where it says that the distinction between these modes of aiding railroads is "*more apparent than real, indeed entirely shadowy.*"

In the case of the Chicago and Iowa Railroad Com-

pany and the town of Mt. Morris vs. Daniel J. Pinckney et al., in an opinion filed January 30, 1875, at Ottawa, not yet reported, a construction of this article was given which should be conclusive.

Among other things, the Court says: "At the time "the section of the constitution referred to (above cited) "was framed, large sums of money in different parts of "the State had been voted by municipalities to be sub- "scribed and donated to railroad companies, on con- "dition that railroads then being constructed should be "completed within a given time; and the country, "whether wisely and judiciously or not, seemed to de- "mand that in cases where the people in the municipal- "ities had, under then existing legislation, voted aid to "railroads by subscription or donation prior to the "adoption of the constitution, that such subscription "or donation should not be affected by the formation of "the constitution. And we have no doubt it was in "view of this demand of a large portion of the State, "that the proviso was engrafted in the foregoing section. "It is conceded by the appellees that the proviso saves "subscriptions to stock previously voted; but they in- "sist that it does not save *donations voted.* We cannot "adopt a construction so narrow and technical. A rea- "sonable construction of the whole section will embrace "donations as well as subscriptions. In one sense of "the term a donation is a subscription to the capital "stock of the company. We have no doubt that at the "time the section was framed, there was then in the State "quite as many donations voted as stock subscribed in "any other manner; and if a necessity or reason existed "to protect a subscription, there was also the same rea-

"son and demand to protect a donation. We enter-
"tain no doubt it was the intention of the framers of
"the constitution, by adding the proviso to the section
"cited *supra*, to place subscriptions and donations on
"the same footing."

These two decisions of our highest State Court would seem sufficient to establish the doctrine that there should be no distiction between *subscriptions and donations.*

But *the bond itself declares it to be a subscription,* "*This bond is issued in pursuance of an election held in* "*said township of East Oakland on the first day of Feb-*"*ruary, 1870, at which election the Supervisor of said* "*township of East Oakland was duly elected agent of* "*said township* TO SUBSCRIBE *the sum of $75,000.*"

This clearly indicates what the parties intended it to be, and is conclusive.

It is still further submitted that this article of the constitution is entirely *prospective* in its terms, and refers solely to obligations to be made and entered into *after its adoption.* Its language is: "No town, etc., "*shall ever become subscriber* * * *or ever make dona-*"*tions to a railroad.*" It in no way touches or affects what *has been done.* This subscription had already been voted—the obligation made and entered into. The well established rule of construction of statutes and constitutions, is that they are never to be retrospective in their operation, unless clearly so stated in their terms, and when the effect of such a construction would be to destroy *vested rights*, or impair the obligations of contracts, the construction *must be prospective.*

We submit this article and the proviso must be taken as a whole: that if it is retroactive with reference to the proviso, it must be so with reference to the whole article. If it prohibits the issue of the bonds, then the whole article must be inoperative, as *it impairs the obligations* of the town of East Oakland and the Paris and Decatur Railroad Company, co-entered into before its adoption.

Again, it is objected that Sec. 12 of Art. 9, on revenue (Revised Statutes, 1874, p. 75), is fatal to recovery on these bonds.

The constitution, in this section, declares "that no "county, city, township, school district or other munici- "pal corporation shall be allowed to become indebted "in any manner, for any purpose, to any amount, in- "cluding existing indebtedness, in the aggregate not "exceeding five per centum on the value of the taxable "property therein, to be ascertained by the last assess- "ment for State and county taxes previous to the incur- "ring of such indebtedness. Any county, city, school "district or other municipal corporation incurring any "indebtedness as aforesaid shall, before or at the time "of doing so, provide for the collection of a direct an- "nual tax sufficient to pay the interest on such debt as "it falls due, and also to pay and discharge the princi- "pal thereof within twenty years from the time of con- "tracting the same. *This section shall not be construed "to prevent any county, city, township, school district or "other municipal corporation from issuing their bonds "in compliance with a vote of the people, which may "have been had prior to the adoption of this constitution "in pursuance of a law providing therefor.*"

If these two sections from the new constitution are applicable, they are necessarily fatal to recovery on

these bonds. But they are clearly inapplicable, as the vote was had three and a half months before the constitution of 1870 was adopted. It would be an *expost-facto* proceeding—an impairing of contracts, and therefore unconstitutional—to allow these objections to have any bearing upon this case. It is within the exceptions in both sections quoted.

The only question that can arise under these sweeping prohibitions of this new constitution is, whether the terminating clause of the last section quoted above—"*in pnrsuanve of a law providing therefor*"—is applicable to this case.

The Plaintiff in Error claims that there was no law providing for that vote, and that therefore the case at bar is not embraced within the saving clause. But where the power is given in the charter it is not necessary that the detailed means of how that power shall be exercised should be stated and defined in the charter granting the power, where there are regular and uniform methods already existing by law, whereby those powers can be exercised. If the charter granted the power to subscribe for the stock, then the general election laws and laws referring to the township affairs were sufficient as to the methods of expressing the will of the people, as to how they would use the powers the charter conferred upon them. Our Supreme Court has decided this question in the case of Mason et al. vs. The City of Shawneetown (——Ill. p.——),* wherein the Court says, "Where a city by the charter is authorized to make all "ordinances necessary and proper for carrying into "execution the powers specified in the act, and the

*Decision not yet published in regular reports.

"charter also gives a power to issue city bonds "for a particular purpose, but is silent as to the mode "or manner in which the power shall be exercised, the "manner of its exercise will be in the discretion of the "city council, except that it must be done under an "ordinance on the subject, and the council may provide "for submitting the question to a vote of the people, "and the vote will be legal."

This case, however, is not to be disposed of by the new constitution, or the charter interpreted through its principles or statements. The charter was framed nearly ten years before the new constitution was adopted, and its language is not to be interpreted by any newly developed principle and mode of construction that may seem to be necessitated by any great change of public sentiment or practice. The common obvious meaning of the language must be given to the charter. This doctrine is held in 1st Wallace, 94, where this Court say, "it would be contrary to good faith and common jus- "tice to permit them to allege newly discovered con- "struction of any equivocal power *after* they have sold "the bonds, and they have passed into the hands of "bona fide purchasers for value."

The remaining general question is, was there a substantial compliance with the letter and spirit of the law in the execution of the powers conferred by the charter?

That there was an honest intention and an earnest effort to do so, no one can doubt, when in possession of the facts.

The evidence submitted shows an election— a special election—called on a petition of supervisor, town clerk,

justice of the peace and twelve freeholders of the town, in writing, and filed in the office of the town clerk, stating that a special meeting was necessary to the interests of the town, and setting forth the objects of the meeting. The statute law is strictly complied with, and no questions are raised as to the formalities of the proceedings. (Laws 1861, p. 222, Sec. 8.)

The call was dated Dec. 30, 1869, and due notice given, and the election was held Feb. 1, 1870. One hundred and sixty-one (161) votes were cast for, and seventeen (17) votes against the proposition submitted for the township to subscribe $75,000 to the capital stock of the Paris & Decatur Railroad Co. The Supervisor was elected by a vote of the people, at the same meeting, to act as the agent of the township in subscribing for the stock.

The bonds were issued March 1, 1871, running for ten years, with interest coupons attached, payable by the State Treasurer,* at the rate of ten per cent. per annum, and signed by the supervisor as *supervisor and agent*, thus bringing their act within the very language of the charter. The bonds recited upon their face the fact of an election duly held, and were in the words and figures following, to-wit:

(Copy of Bond No. 292.)

No. 292. $500.

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COLES, TOWNSHIP OF EAST OAKLAND.

Know all men by these presents, that the township of

*The registry of these bonds by the Auditor, makes the interest payable by the State Treasurer.

East Oakland, in the county of Coles, and State of Illinois, acknowledges itself to owe and be indebted in the sum of five hundred dollars, lawful money of the United States of America, which sum the said township of East Oakland promises to pay to the Paris and Decatur Railroad Company, or bearer hereof, at the Security Bank of the city of New York, ten years from the first day of March, 1871, with interest at the rate of ten per centum per annum, payable annually at said bank upon presentation and delivery of the several coupons hereto attached as they become due, and to the payment of said principal and interest in the manner aforesaid, the faith and revenue of said township of East Oakland is irrevocably pledged. This bond is issued in pursuance of an election held in said township of East Oakland on the 1st day of February, 1870, at which election the supervisor of said township of East Oakland was duly elected agent of said township to subscribe the sum of seventy-five thousand dollars to the capital stock of the Paris and Decatur Railroad Company, and to issue the bonds of said township in payment of said stock, to aid in the construction of said railroad, and by virtue of an act of the Legislature of said State of Illinois, entitled "An act to incorporate the Paris and "Decatur Railroad Company," approved February 18th, 1871.

In witness whereof, the supervisor, as agent of said township, has hereunto set his hand and seal, this 20th day of April, A. D. 1861.

CHARLES CLEMENTS, [L. S.]
Supervisor and Agent.

J. F. YARZIN, *Clerk.*

[Twenty Coupons.]

On the back of each bond is this indorsement:

AUDITOR'S OFFICE, ILLINOIS,
SPRINGFIELD, *April* 11, 1872.

I, Charles E. Lippincott, Auditor of Public Accounts of the State of Illinois, do hereby certify that the within bond has been registered in this office this day, pursuant to the provisions of an act entitled "An act to "fund and provide for paying the railroad debts of "counties, townships, cities and towns," in force April 16th, 1869.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of my office, the day and year aforesaid.

C. E. LIPPINCOTT,

Auditor Public Accounts.

AUDITOR'S OFFICE, ILLINOIS.

These bonds were executed in fine style. They were dressed in the choicest colors nature has employed in her creative power, most pleasant to the eye, and all the engraver's arts were used to impress the beholder and inspire him with confidence. They were sold in a distant market. The recitals on their face, and the certificate of registry on their back, by the Auditor of State, all imported a compliance with law and the conditions imposed in their execution. They bristled with authority, and in front and rear were supported by officers of State, purporting to sanction the statements of the supervisor, made and signed by him on their face, and promising to collect and pay the interest by the power-

ful machinery that collects and disburses the revenue of the State.

The objection is made that *at a special town meeting no authority exists by law for voting on the question submitted to the people in this case;* that there is no authority for voting a subscription to a railroad at a special town meeting.

The statute, in enumerating the powers given to electors at special town meetings, among others mentioned, says: "*but special town meetings shall have no power to "act on any subject not embraced in the statement of the "notice calling the same.*" (Laws 1861, 223, sec. 9, 3d.)

The intention of the Legislature in this statute seems to be prohibitory *only so far as the notice is concerned.* That the people may act on any subject that they could act on at a regular town meeting, provided that the subject to be acted upon was in the call and notice for the special meeting, the only object being to prevent the people from surprise, and to obtain a fair vote of the electors on whatever question was submitted. To give any other construction to this statute would be to deprive the people of their constitutial rights, and the privilege of conducting in their own way their own business. It is easy to see that emergencies might arise which would result in great destruction of corporate property and injury to the public interests of the town, if the people were obliged to wait until the annual town meeting before they could act. The fair import of that statute is, that if *due notice is given, and the subject to be acted upon be contained in the notice, any subject proper to be acted upon at the annual town meeting may be considered at the special town meetings.* (Dillon on

Municipal Corporations, 237, Sec. 205; and 13 Conn., 227.)

This Court, in 3d Wallace, 93, lays down the doctrine that the people may appoint their agent to act for them in subscribing for a railroad; and also, in 3d Wallace, 275, properly constituted authorities may bind corporations when they have power to act.

Angell & Ames say (p. 276) that persons acting publicly as officers of a corporation are presumed to be rightfully elected.

If the power to issue the bonds exists, what is the position of the innocent holder of them, and has he any rights in the premises? This Court say, that "*the power to issue bonds being shown, the muni-*"*cipal corporation, as against bona fide holders of* "*them for value, is estopped from denying that the* "*power was properly executed.*" (3. Wallace, 654.) Under this decision, if the charter and the legislative enactments gave the power to subscribe and issue these bonds to the town of East Oakland, that township is now estopped from denying any informality in the execution of this power. The time of an election, whether annual or special, matters not. All proceedings concerning the election and the issue of bonds are a part of *the executing* of the power, and this decision debars the township from denying that they were properly, that is, legally executed, as against the bona fide holders, for value received.

The doctrine is laid down in 21 Howard, 545, in the famous case of Commissioners of Knox County vs. Aspinwall,—"*That where the bonds on their face import a* "*compliance with the law under which they were issued* "*the purchaser is not bound to look further.* The decis-"ion of the board of commissions may not be conclu-

"sive in a direct proceeding to inquire into the facts "before the rights and interests of others had attached; "*but after the authority has been executed, the stock "subscribed and the bonds issued and in the hands of "innocent holders, it would be too late, even in a direct "proceeding, to call it in question.*"

And in 1st Wallace, 96, this Court says, "the "epidemic insanity of the people, the folly of county officers, the knavery of railroad speculators, "are pleas which might have just weight in an "application to restrain the *issue or negotiation* of these "bonds, but cannot prevail to authorize the repudiation "after they have been negotiated and have come into "possession of bona fide holders."

There has been an honest attempt in the first instance to comply with the charter and all the legislative enactments, with regard to the election and the subscription of this stock, in the case at bar, by the people of the township, and all these cases tend to show that where there has been a substantial compliance with the law, or what was supposed to be the law, in the vote taken at the special election, the rights of third parties and inno cent bona fide holders of these bonds cannot be defeated by any informalities in the execution of the powers given by the charter and the legislature.

"When a corporation has power, under any circum- "stances, to issue negotiable securities, the bona fide "holder has a right to presume that they were issued "under circumstances which give them the requisite au- "thority, and are no more liable to be impeached for "any infirmity in the hands of such a holder than any "other commercial paper." (14 Wallace, p. 296, City of

Lexington vs. Butler; 1 Wallace, p. 203, Gelpeke vs. Dubuque; 21 Howard, p. 539, Knox Co. vs. Aspinwall; 5 Wallace, p. 784, Supervisors vs. Schenck; 24 Howard, p. 299, Bissell vs. Jeffersonville.)

"If the legal authority is sufficiently comprehensive, "a bona fide holder for value has a right to presume "that all precedent requirements have been complied "with." This is the doctrine held in Meyer vs. City of Muscatine, 1 Wallace, 175.

No charter could be *more* comprehensive than that of the Paris & Decatur Railroad Co., for it permits the agent of *any corporate* body to subscribe any amount to its capital stock.

In the case of St. Joseph Township vs. Rogers (16 Wallace, 645), this Court held, "that in that case "it was the supervisor's duty, who executed the "bonds, to determine the question whether an elec- "tion was held, and whether a majority of the votes "cast were in favor of the subscription, and, inasmuch "as he passed upon that question and subscribed for the "stock and subsequently executed and delivered the "bonds, *it was already too late to question their validity "when they were in the hands of an innocent holder.*"

In 65 Ills., 459, our own Supreme Court hold, "that "where corporations have exercised powers incidental "to those conferred, and in the furtherance of the gen- "eral objects of the corporation, although the subject of "the contract may not be within any express right con- "ferred, they will be estopped from denying that they "had authority to make such contracts. Good faith to "third parties who deal with corporations, and who "may have no accurate knowledge of the extent of their

"powers under their charters, requires the adoption of "this salutary rule. The rule has its foundation in the "plainest principles of justice. *When such corporations "have received the benefits of a contract, if there is noth-"ing in it contrary to public policy, there can be no just "reason why they should not be required to perform it."* (The Chicago Building Society vs. Crowell.)

The contract made by the corporate town of East Oakland and these bond-holders was a simple exercise of powers, not only incidental, but *powers expressly granted by the legislature*, and in the furtherance of the general object of the corporation, to furnish them with an easy access to markets, and to develop and enrich their township by all the powerful and inestimable auxiliaries of a railroad. Having issued their bonds, sold them in a distant market, built their road and paid their interest for two years, and having enjoyed the benefit of the contract for five years, and still in the full enjoyment of it, they are most justly estopped by this decision from pleading want of authority to make the original contract. And instead of the road that the money of these bondholders built for the people of East Oakland being injurious to public policy, railroads have been declared by this same Court to be public highways —the people's highways—and a public necessity in our age.

Again, in 55 Ills., 418, it is held—courts say to corporations, "you cannot, in this case, raise the question "of your power to make the contract. It is sufficient "that you have made it, and by so doing have placed in "your corporate treasury the fruits of others' labors, "and every principle of justice forbids that you be per-

" mitted to evade payment by an appeal to the limita-
" tions of your charter. * * * And while courts are
" inclined to maintain with vigor the limitations of cor-
" porate actions, whenever it is a question restraining
" the corporations *in advance* from passing beyond the
" boundaries of their charters, *they are equally inclined*,
" *on the other hand, to enforce against them contracts*,
" *though ultra vires of which they have received the bene-*
" *fit*." (Bradley vs. Ballard.)

The defense in this case is simply technical and formal. They nowhere touch the equities of the case and the parties thereto. They do not aver fraud, nor even a non-compliance, on their part, of the contract, by either the railroad company or the holders of these bonds. They do not deny that they received all they contracted for, or had a right to expect, or did expect to receive from the contract. They received the railroad as a fixed and permanent possession, in full accord with the terms of their charter, and were happy in its use and enjoyment. They paid their interest for two years without protest or complaint; then some newly discovered construction of the terms of the charter under which they acquiesced in apparent good faith and entire satisfaction, viewed in the light of the new constitution since adopted, have led them to think they could repudiate their entire contract, leaving them in the full enjoyment of all the fruits of the contract while the utterly refuse to comply with their part of its conditions.

And this highest Court of the land for trial of such causes, sitting superior to all State Courts, is solemnly asked by the defense to lend its aid to this township to defraud these innocent holders of their bonds regularly

purchased for value in the commercial marts of the country, and to bring this highest judicial power of the land to support them in repudiating the whole issue of these bonds of the Paris and Decatur Railroad Company, amounting to over $300,000.

If this Court can sustain the position of the defense in this case, then there is no safety whatever in the purchase of this kind of commercial securities.

We submit that the Township of East Oakland had the power to issue the bonds in controversy under the charter and laws of Illinois, and that that power was legally executed in their issue, and that the judgment of the Court below should be affirmed.

Louis C. Robinson

GEORGE A. SANDERS,

Of Counsel for Defendant in Error.